

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CHEVRON MINING,

Plaintiff

vs.

No. 1:13-CV-00328 PJK/JFR

UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF THE INTERIOR,
UNITED STATES DEPARTMENT OF AGRICULTURE,

Defendants.

TRANSCRIPT OF PROCEEDINGS

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BEFORE: HONORABLE JUDGE PAUL KELLY
UNITED STATES 10TH CIRCUIT JUDGE

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1 THE COURT: You may proceed.

2 MR. TODD: Good morning, Your Honor.

3 A few housekeeping matters. First,
4 Your Honor, I mentioned yesterday there were some
5 discovery that Chevron wanted to offer and we had to
6 confer with the Government. We have done that, and
7 have agreed that all of the discovery documents that
8 we tendered in Docket Number 223 may be admitted.

9 THE COURT: Very good.

10 MR. TODD: Secondly, Your Honor, I
11 realized at the end of the day that there was two
12 exhibits I used with Dr. Rigby that I failed to move
13 into evidence. That was CX109, CX110 and CX47.
14 Those are the maps that I overlaid.

15 THE COURT: All right. Any objections?

16 MS. KIMBALL: No objections.

17 MR. TODD: They're admitted, 109, 110, and
18 47, all CX.

19 (Exhibits admitted, CX109, CX110, CX47.)

20 MR. TODD: Thirdly, Your Honor, we have
21 reviewed the case as it has gone on so far and based
22 on the evidence to this point, we see no need to
23 call Mr. Cryderman, who is the witness we were going
24 to call tomorrow --

25 THE COURT: Okay.

1 MR. TODD: -- the molybdenum fellow, so
2 with that, Chevron needs only hold the evidence open
3 for Dr. Haddad, and we hope to get a date when we
4 can get him to Santa Fe and we will confer and come
5 to you.

6 THE COURT: All right. Very good.

7 MR. TODD: And the final point, the case
8 management order provides for 40 days from the close
9 of trial to submit post-trial briefs and findings
10 and conclusions. Depending on when Dr. Haddad gets
11 cross-examined, we may need to play with that date,
12 but we can take that up later.

13 THE COURT: Okay. Thank you.

14 MR. TODD: With that, we leave it to the
15 Government.

16 THE COURT: Thank you.

17 Counsel, you may call your first witness.

18 MR. AUGUSTINI: Good morning, Your Honor.

19 The United States calls Mary Sitton.

20 (Whereupon, the witness was sworn.)

21 THE DEPUTY CLERK: Please be seated and
22 state and spell your name for the record.

23 THE WITNESS: My name is Mary Sitton. The
24 last name is spelled S-I-T-T-O-N.

25 MR. AUGUSTINI: Good morning, Ms. Sitton.

1 Did you prepare a written direct testimony
2 for the Court in this matter?

3 THE WITNESS: I did.

4 MR. AUGUSTINI: Do you have a correction
5 to make before we offer it?

6 THE WITNESS: I do. It is on Page 15,
7 Paragraph 36.

8 We referenced one of the piles in that
9 paragraph as Sugar Shack and it should be Sulphur
10 Gulch South.

11 MR. AUGUSTINI: Okay. Any other
12 corrections?

13 THE WITNESS: No.

14 MR. AUGUSTINI: And with that, is your
15 testimony true and correct, to the best of your
16 knowledge?

17 THE WITNESS: Yes.

18 MR. AUGUSTINI: The United States offers
19 Ms. Sitton's direct testimony, Your Honor.

20 THE COURT: Very good. It will be
21 admitted.

22 (Ms. Mary Sitton's direct testimony was
23 prefiled and admitted.)

24 MS. CRISHAM PELLEGRINI: Good morning,
25 Your Honor.

1 CROSS-EXAMINATION

2 BY MS. CRISHAM PELLEGRINI:

3 Q. Ms. Sitton, I only have two topics from
4 your testimony to discuss with you this morning.

5 We're going to start by talking about your
6 experience. Your experience and expertise is in
7 aerial photographic research acquisition and
8 analysis; is that correct?

9 A. Yes.

10 Q. And you have never testified in court as
11 any other sort of expert?

12 A. No.

13 Q. You are not an expert in mining?

14 A. No.

15 Q. You are not an expert in environmental
16 engineering?

17 A. No.

18 Q. You are not a certified geologist?

19 A. I have a background in geology. I have a
20 Bachelor's degree in geology, but I am not a
21 certified geologist, no.

22 Q. You are not an expert in soil science?

23 A. I am familiar with soil science but I am
24 not an expert.

25 Q. And you're not an expert in land patents?

1 A. No.

2 Q. And you are not an expert in mining
3 claims?

4 A. No.

5 Q. So in your testimony, Ms. Sitton, when you
6 testified and talk about the record of decision from
7 the EPA, you are not testifying regarding the
8 scientific or the technical basis for the EPA
9 recommendations and conclusions, correct?

10 A. Well, I use those documents in
11 corroboration with my analysis of the aerial
12 photographs, so I am documenting what is in the
13 reports and I am using that in correspondence with
14 my analysis of the aerial photographs.

15 Q. But you are not just -- sorry, just to
16 clarify, you're not testifying regarding the
17 technical basis for the EPA's conclusions?

18 A. I don't doubt their technical basis, but
19 you know, I think it is an accurate document.

20 Q. Then the next topic I want to discuss with
21 you deals with the tailings area.

22 A. Uh-huh.

23 Q. In your testimony, you discuss the western
24 tailings impoundment.

25 A. I discussed both, but yes.

1 Q. And you understand that Molycorp purchased
2 the land for the western tailings impoundment from
3 the Federal Government?

4 A. I do.

5 Q. And prior to that sale, Molycorp informed
6 the Government that they plan to use the land for
7 tailings, correct?

8 A. Yes.

9 Q. And prior to the sale, the Government
10 determined that that land that they were selling to
11 Molycorp would -- the highest and best use of that
12 land would be for tailings?

13 A. I think that is what the document said.

14 Q. Next to or near the tailings impoundments,
15 Molycorp held unpatented mill site claims, correct?

16 A. Yes.

17 Q. Those unpatented claims were known as
18 pending claims?

19 A. Right.

20 Q. Okay. And you analyzed aerial photographs
21 of the tailings area, which included these
22 unpatented claims, from four separate years?

23 A. Yes.

24 Q. The first picture was from September 1965?

25 A. Correct.

1 Q. The next in time was October of '74?

2 A. Correct.

3 Q. And then the next in time was September of
4 '81?

5 A. Correct.

6 Q. And then the final picture or photograph
7 was from June 1990?

8 A. Yes.

9 Q. Now, in your review of the October '74,
10 photograph, you did not identify any tailings
11 located on those unpatented mill site claims,
12 correct?

13 A. That is correct.

14 Q. However, when you looked at the photograph
15 from 1981, you did note some tailings on those
16 unpatented claims, correct?

17 A. There was a small amount of tailings in
18 Pinon 11, it was less than an acre.

19 Q. And so, based on your review of the
20 photographs, you're not able to tell when exactly
21 Molycorp started putting tailings on those
22 unpatented mill site claims, correct?

23 A. Well, there was only one and that was
24 Pinon 11, so it had to have occurred -- there is a
25 gap in the aerial photographs, from '74 to '81, so

1 it was there in '81. It was less than an acre and
2 it had to be sometime prior to that date of 1981.

3 Q. So in order to help us find out when those
4 tailings were first placed there, I want to show you
5 Chevron Exhibit 325, which is already in evidence.

6 This document is Molycorp's 1977
7 application to patent the Pinon claims.

8 And Molycorp will show they divided the
9 Pinon claims into two groups.

10 Are you aware of that?

11 A. Yes.

12 Q. So they have two separate -- in this
13 document, have two separate patent applications.

14 So if we turn to Page 3 of 10, of the
15 first patent application, would you agree with me,
16 Ms. Sitton, that the document states that in 1977,
17 as of 1977, the mill sites being named in this
18 application were presently being used to receive
19 tailings?

20 A. That is what the document says, but that
21 is not what the aerial photographs show. I think it
22 is a general thing about the whole entire area.

23 I didn't see tailings in all of the mill
24 site claims.

25 Q. Okay. Just to clarify, you didn't look at

1 a photograph from 1977, correct?

2 A. No, but I had one from '81 and between '74
3 and '81, I wasn't seeing any tailings in any of the
4 Pinon claims except for that small part in Pinon 11.

5 Q. Okay. And actually, if we go back to the
6 front of this page, I just want to see if it covers
7 Pinon 11.

8 I think the first one does not.

9 A. Does not.

10 Q. Okay. So according to the application for
11 these Pinon claims, Molycorp, in 1977, was presently
12 using these mill sites for tailings, according to
13 the document?

14 A. That is what the document said, but that
15 is not what I saw in the aerial photographs.

16 Q. And then, if we turn to Page 6 of the
17 application -- and this is the second application?

18 A. Uh-huh.

19 Q. And this also -- this one includes
20 Pinon 11?

21 A. Correct.

22 Q. Okay. If we turn to Page 8 of 10.

23 And in this application, would you agree
24 with me that it states that these mill site claims
25 were also being used to receive tailings?

1 A. Again, that is what the document says. I
2 think they are talking about the entire area, you
3 know, those -- the tailings were going into the two
4 ponds and the mill site claims were to support that
5 activity.

6 I didn't see tailings going into any of
7 the ponds except for Pinon 11, and a small amount.

8 Q. And just to clarify, this application,
9 though, is not for the tailings impoundments,
10 correct, it is for just the mill sites?

11 A. That is what it says, yeah.

12 Q. Okay. And now, if we look at what the
13 United States was saying about these mill site
14 claims, at the same time, I am going to show you
15 Chevron 331, which has also already been admitted
16 into evidence.

17 A. Uh-huh.

18 Q. And this is a 1979 Government Mineral
19 Report for those same Pinon mill site claims?

20 A. Uh-huh.

21 Q. Okay. It has nothing to do with either
22 the western or eastern tailings impoundment?

23 A. Uh-huh.

24 Q. And was the document put together by the
25 Government?

1 Is that correct?

2 A. Yes.

3 Q. Now, if we turn to Page 2 of the document,
4 would you agree with me that according to the
5 United States' Mineral Report of these Pinon claims,
6 it states that the Pinon mill site claims are being
7 used for waste disposal?

8 A. What paragraph is that?

9 Q. I could pull it out.
10 Paragraph 4, underneath "Background and
11 Land Status."

12 The paragraph that starts with, "Molycorp,
13 a subsidiary company of Union Oil," halfway through
14 that paragraph.

15 Starting, "The mill site claims are
16 presently being used for waste disposal from these
17 operations."

18 A. That is what the document says, but that
19 is not what I was seeing on the aerial photographs.
20 And, you know, back then I don't know if waste
21 disposal was considered like CERCLA waste either,
22 so --

23 Q. Okay. So you would agree with me, though,
24 Ms. Sitton, that we now have -- there are two
25 documents saying that tailings were being placed on

1 **the Pinon claim prior to 1981?**

2 A. This document doesn't say tailings. It
3 says waste disposal. It could be they are putting
4 roads in, they could be putting ditches in, it could
5 be anything.

6 **Q. Anything that would be waste. A road is**
7 **not waste.**

8 A. Right. But that is what the document says
9 but that is not what I saw in the aerial
10 photographs.

11 **Q. Sorry, I understand that. I just want to**
12 **clarify that we have seen, there's at least**
13 **documents that states that waste is being placed on**
14 **these unpatented Pinon claims prior to 1981.**

15 A. Correct. And it doesn't say which ones,
16 it doesn't say how -- I'm sorry. It doesn't say how
17 much, doesn't say which ones and, you know -- and I
18 looked at the aerial photographs. And when I looked
19 at them, I only saw tailings in Pinon 11.

20 MS. CRISHAM PELLEGRINI: No further
21 questions, Your Honor.

22 THE COURT: Thank you.

23 You may redirect.

24

25

1 REDIRECT EXAMINATION

2 BY MR. AUGUSTINI:

3 Q. Good morning, Ms. Sitton.

4 A. Good morning.

5 MR. AUGUSTINI: Mr. Hambrick, could you
6 please pull up USX414.

7 Q (By Mr. Augustini) Do you recognize this
8 signature, Ms. Sitton?

9 A. I do.

10 Q. Did you prepare it?

11 A. I did.

12 Q. What does it reflect?

13 A. That is an aerial photograph, dated
14 October 3, 1974, covering the tailing site in the
15 western portion of the mine site.

16 Q. Did you locate the site boundary depicting
17 the tailings area with a redline?

18 A. I did.

19 Q. And where did you get that site boundary?

20 A. That is URS boundary. It came off of one
21 of their maps.

22 Q. URS is Chevron's environmental contractor?

23 A. Yes.

24 Q. So you use the same boundary that Chevron
25 uses to depict its property ownership?

1 A. Yes.

2 Q. Generally, can you indicate with a touch
3 screen, what area has been discussed regarding the
4 Pinon claims, where are the Pinon claims relative on
5 this photo?

6 A. They are on the west side of the western
7 tailings pond.

8 There is actually a map overlay that goes
9 on here. This is general because the map is not up.
10 There is some over here and there is some up here
11 (indicating).

12 Q. Okay. So if I add to your annotations --
13 well, it is not a line, but generally the Pinon
14 claims are over there (indicating)?

15 A. Yes.

16 Q. And where are these tailings that
17 Chevron's counsel has been talking about, based on
18 the documents in the Pinon claims, as of '74?

19 A. In '74, they are shown as the light-toned
20 material below Dam 1 in the eastern pond. I mean
21 above Pond 1 and then above Dam 4 in the western
22 impoundment.

23 Q. Those are the --

24 THE COURT: So the white is --

25 THE WITNESS: Yeah, those are the tailings

1 ponds. And there is some, like, kind of a greenish
2 liquid in the southern part of the western pond.

3 THE COURT: What is the white stuff there
4 in the --

5 THE WITNESS: That is the tailings that
6 have settled out in the pond.

7 THE COURT: Where?

8 THE WITNESS: The tailings, you know, they
9 take the tailings from the mill site and they slough
10 it over into the ponds. And when it gets in there,
11 it settles out as a light-toned settlement.

12 THE COURT: And how does the white -- I am
13 talking about the white with the second purple arrow
14 there.

15 THE WITNESS: Okay. In the eastern pond
16 or the western pond?

17 THE COURT: I don't know which pond it is.
18 I can't tell east from west here.

19 MR. AUGUSTINI: Let's clear this,
20 Your Honor.

21 THE WITNESS: Okay. You know, I can show
22 where the pipeline enters the -- there is a pipeline
23 that enters the eastern impoundment from the mill
24 site to the west. And I would have to blow this up,
25 but it comes into the east side right there

1 (indicating), and then it flows out into this pond.

2 And then if this pond gets full --

3 THE COURT: So that white is a pond?

4 THE WITNESS: Right. It is a tailings
5 pond.

6 THE COURT: Okay. I thought you said it
7 was a tailings.

8 THE WITNESS: It is a tailings pond, so it
9 receives sediment-laden liquid from the mine.

10 THE COURT: Okay. That clears it up if
11 that is a pond there.

12 Q (By Mr. Augustini) Just to be super clear,
13 Ms. Sitton, is the white material essentially the
14 solids that settled down into the bottom of the
15 tailings impoundment?

16 A. Yes.

17 MR. AUGUSTINI: And where there is liquid,
18 Your Honor, in the western impoundment --

19 Q. (By Mr. Augustini) Are the tailings
20 visible because what you see is liquid, correct?

21 A. Correct.

22 THE COURT: But the tailings are the white
23 above that, is part of a pond, right?

24 THE WITNESS: Correct.

25 THE COURT: And that is showing the

1 tailings in it.

2 THE WITNESS: Right.

3 THE COURT: Okay. Thank you.

4 Q (By Mr. Augustini) Right.

5 And as of '74, it just so happens that the
6 eastern impoundment is mostly dry; is that your
7 interpretation of this photo?

8 A. Yeah, there may be some wet sediment in
9 there because there is some light and some medium
10 tone, so some of that may be wet.

11 Q. For example, the medium tone material is
12 darker gray?

13 A. Correct.

14 Q. And is it your testimony that maybe there
15 is some liquid in that area but not the full
16 impoundment, correct?

17 A. Correct.

18 MR. AUGUSTINI: Just to be clear,
19 Your Honor, we have talked about Section 35 and
20 Section 36. I think I can see the section line.

21 A. Right.

22 Q. (By Mr. Augustini) And there is a 36.
23 That is where I have marked the X.

24 Is that the eastern impoundment?

25 A. Yes.

1 Q. And then, obviously, the other side is the
2 western impoundment that is at issue in the case,
3 correct?

4 A. Correct.

5 MR. AUGUSTINI: Over here, if we can zoom
6 in to the west, Mr. Hambrick, please.

7 THE COURT: Over where?

8 MR. AUGUSTINI: There we are.

9 A. That is Section 35, showing the western
10 tailings pond.

11 Q (By Mr. Augustini) We have the red boundary
12 line for Chevron's property further to the west,
13 correct?

14 A. Yes.

15 THE COURT: Would you move your mic over a
16 little bit.

17 Q (By Mr. Augustini) What have you annotated
18 along in this area?

19 A. There is a ditch and a berm.

20 Q. And those are to the west of the western
21 tailings impoundment, correct?

22 A. Correct.

23 Q. And then beyond that ditch, in the berm,
24 over here (indicating)?

25 A. That is forest and trees, trees.

1 Q. Are those the Pinon claims?

2 A. Yes.

3 Q. And where is the white tailings material
4 within those claims that Chevron is talking about?

5 A. There are no tailings over there. That is
6 all vegetated.

7 Q. Now, you did mention, both in your report
8 and your direct testimony, that as of 1981,
9 September 1981, the next photo that you reviewed,
10 there is a tiny portion of tailings that just sneaks
11 into the easternmost part of Pinon 11, correct?

12 A. Correct.

13 Q. And that is the only one out of all the
14 Pinon claims where you saw any tailings at all,
15 correct?

16 A. Correct.

17 MR. AUGUSTINI: Mr. Hambrick, US417,
18 please.

19 Q (By Mr. Augustini) Ms. Sitton, do you
20 recognize this figure?

21 A. I do.

22 Q. What is it, please?

23 A. This is a September 20, 1981 aerial
24 photograph with my annotations on the photograph and
25 it has got the section numbers, it has got the

1 tailings pipe leading into the eastern impoundment.

2 THE COURT: And where is the pipe that you
3 talked about?

4 THE WITNESS: Right there (indicating).

5 THE COURT: Okay. Thank you.

6 THE WITNESS: Right there (indicating).

7 Q (By Mr. Augustini) And again, just for
8 general reference, what we are talking about here is
9 the eastern impoundment. That is not part of the
10 case, right?

11 A. Correct.

12 Q. And over here, again, we have the western
13 impoundment, right?

14 A. Correct.

15 Q. And just generally --

16 THE COURT: Try to stay put. Just move
17 that microphone over there. There you go.

18 MR. AUGUSTINI: Thank you, Your Honor.

19 Q (By Mr. Augustini) Do you see liquid in
20 either of the impoundments as of September 1981?

21 A. There is some liquid in both of those. In
22 Section 36, it would be at the end of the pipe that
23 leads into it over here. And then in the western
24 one, there is some liquid up here (indicating).

25 Q. But they are basically dry as of this

1 **time, correct?**

2 A. The majority of them are dry, yes.

3 **Q. So what, then, is this liquid that is**
4 **pooled up over here (indicating)?**

5 A. That is a diversion channel to keep water
6 from entering the ponds.

7 THE COURT: The what? I'm sorry.

8 THE WITNESS: It is like a diversion
9 channel and a decant channel. So as water comes off
10 the mountain, they want to capture it there so that
11 it doesn't run into the ponds and then run out the
12 other side, fill up the ponds and overtop the dams.

13 **Q (By Mr. Augustini) Ms. Sitton, were you**
14 **here when Mr. Dewey testified regarding the purpose**
15 **of those perimeter channels?**

16 A. I was.

17 **Q. And is that consistent -- is your view**
18 **consistent with how he described the use of those**
19 **drainage ditches?**

20 A. It is.

21 **Q. And what is this redline that is hatched**
22 **down along there?**

23 A. That is a berm. And again, that berm is
24 constructed to keep water. The mountains to the
25 west are very steep and there's some drainages that

1 come down towards the ponds. So that dike is
2 keeping that water from entering those ponds.

3 Q. So I guess, in a general sense, you could
4 say that a perimeter berm that blocks runoff from
5 the mountains is related to the use of the
6 impoundments.

7 Is that what you were getting at earlier
8 in your testimony this morning?

9 A. Yes.

10 Q. Just as an example, I know you used 3D
11 viewing software to better appreciate the topography
12 of the area, correct?

13 A. I do.

14 Q. But you are familiar with the drainages
15 and can you confirm, essentially, that one of the
16 main drainages from the mountains comes through like
17 that?

18 A. It does.

19 Q. Is there another drainage that you can see
20 and just briefly point out for the Court's reference
21 to the north?

22 A. To the north? There is one coming down
23 through here. There is a couple over here.
24 (Indicating).

25 Q. And the whole idea is, you don't want your

1 impoundments to be swamped with natural runoff from
2 the mountains, correct?

3 A. Correct.

4 Q. And if you had to pinpoint the less than
5 1 acre that relates to Pinon 11, can you do that
6 this morning?

7 A. I can.

8 And to explain to the Court how I can do
9 that, we put these Pinon claim maps into our
10 geographic information systems database and that way
11 we can overlay that map over the top of these
12 photographs.

13 So that was helpful because then I could
14 look at the map over the top of the photograph and I
15 could see where all the Pinon claims were and I
16 could -- I, you know, look at it in stereo and
17 identify what was in -- within those claims.

18 And in Pinon 11, the very southeast corner
19 of Pinon 11, I don't even know if I could get a
20 little dot in there -- it is right there.

21 It scoots into right there. It is less
22 than an acre. (Indicating).

23 Q. And that dot is probably bigger than the
24 actual amount of tailing that you can see within the
25 claim, correct?

1 A. Yes.

2 Q. And, again, do you recall Chevron was
3 applying for ownership of the Pinon claims at the
4 time, correct?

5 A. Correct.

6 Q. Do you remember the date of the patent
7 issuance with respect to Pinon 11?

8 A. I think it was just prior to this, in
9 April '81.

10 Q. Okay. So as of this moment, Chevron owns
11 even that less than 1-acre part that is covered by a
12 small amount of tailings, correct?

13 A. Yes.

14 Q. How long did Chevron continue operating
15 these impoundments after 1981?

16 A. I think until they stopped mining in 2014.

17 MR. AUGUSTINI: Mr. Hambrick, please
18 display CX331, Page 4.

19 Q (By Mr. Augustini) Ms. Sitton, was this the
20 patent survey that Chevron's counsel discussed with
21 you earlier this morning?

22 A. Yes.

23 Q. And she pointed to some particular
24 language that generally described the use of the
25 Pinon claims, correct?

1 A. Yes.

2 Q. And you mentioned that --

3 MR. AUGUSTINI: Well, let's look at the
4 bottom of the page, blow that up under "Claim
5 Development," please.

6 Q (By Mr. Augustini) When you look at what
7 the use actually was as of this time in the late
8 1970s, what does CX331 indicate, Ms. Sitton?

9 A. That they -- the initial development began
10 in 1976. They constructed a retention dike, an
11 access road, fence, surface runoff, a decant
12 channel, around the periphery of the enlarged
13 tailings disposal area.

14 Q. So would all of those things relate,
15 generally, to the use, specifically the disposal of
16 tailings that is occurring to the east impoundments?

17 A. Yes.

18 Q. Now, Ms. Sitton, do you know, based on
19 EPA's record of decision, approximately how much
20 area will need to be covered with clean soil and
21 revegetated with respect to the two tailings
22 impoundments?

23 MS. CRISHAM PELLEGRINI: Objection,
24 Your Honor. This goes to the environmental issues,
25 which goes to the environmental issue, which have

1 already been stipulated and it is also beyond the
2 scope of the cross.

3 THE COURT: Sustained.

4 Q (By Mr. Augustini) Ms. Sitton, do you know
5 approximately the size of the two impoundments,
6 based on your review of the aerial photographs?

7 A. Over 700 acres, both of them.

8 THE COURT: 700 acres of the tailing
9 ponds?

10 THE WITNESS: Both of them, yeah. Uh-huh.

11 MR. AUGUSTINI: No further questions,
12 Your Honor.

13 THE COURT: Thank you very much.

14 You may step down.

15 (Whereupon, the witness was excused.)

16 THE COURT: You may call your next
17 witness.

18 MR. HARRISON: Your Honor, the Government
19 calls Dr. Fredric Quivik.

20 (Whereupon, the witness was sworn.)

21 THE DEPUTY CLERK: Please be seated, and
22 state and spell your name for the record.

23 THE WITNESS: My name is Fredric Lincoln
24 Quivik. Last name spelled, Q-U-I-V as in vegetable,
25 I-K.

1 MR. HARRISON: Good morning, Dr. Quivik.

2 THE WITNESS: Good morning.

3 MR. HARRISON: Did you submit written
4 testimony in this case?

5 THE WITNESS: I did.

6 MR. HARRISON: Is that still your
7 testimony today?

8 THE WITNESS: Yes.

9 MR. HARRISON: Do you have any changes to
10 that testimony?

11 THE WITNESS: No, good.

12 MR. HARRISON: Your Honor, I would like to
13 offer Dr. Quivik's testimony.

14 THE COURT: Very good. Accepted.

15 (Dr. Frederic Quivik's direct testimony
16 was prefiled and admitted.)

17 CROSS-EXAMINATION

18 BY MR. TODD:

19 Q. Good morning, Dr. Quivik. Nice to see you
20 again.

21 A. Good to see you.

22 MR. TODD: Your Honor, before I start, I
23 would like to make one note.

24 We are very mindful of your exhortations
25 to move things along.

1 THE COURT: You don't have to go very
2 fast.

3 MR. TODD: In that spirit, we are mindful
4 to move things along.

5 This witness has submitted 99 pages of
6 narrative testimony, without any breaks, even from
7 questions, so this may take a little while. But I
8 do want you to know I was until midnight turning a
9 100-page outline into a 49-page outline, so I am
10 trying.

11 THE COURT: All right.

12 MR. TODD: Thank you.

13 Q (By Mr. Todd) Dr. Quivik, the Government
14 has tendered you as an expert in industrial history,
15 correct?

16 A. Correct.

17 Q. And you have testified in other cases as
18 an industrial historian, correct?

19 A. Yes.

20 Q. And you have never been qualified by a
21 Court to testify as an expert in anything other than
22 industrial history?

23 A. Correct.

24 Q. And all of the testimony that you are
25 offering in this case is as an industrial historian?

1 A. Yes, an expert industrial historian.

2 Q. An expert industrial historian, thank you,
3 sir.

4 Now, this case involves Federal land use,
5 mining laws and policy. And you understand that.

6 You are not a lawyer, sir, correct?

7 A. Correct.

8 Q. And you don't hold yourself out as an
9 expert in Federal land management?

10 A. Correct.

11 Q. You have no prior expertise with mining
12 claims or anything like that, for example?

13 A. Correct.

14 Q. And you are not an expert in geology?

15 A. Correct.

16 Q. Or in mining or metallurgic or
17 construction engineering?

18 A. Correct.

19 Q. You are not here offering opinions as an
20 environmental scientist?

21 A. Correct.

22 Q. Nor as an expert in mineral processing?

23 A. Correct.

24 Q. Now, this case also, as we know from
25 testimony over the last two days, has to do with

1 **mine finances, correct?**

2 A. Correct.

3 Q. And as to that, you're not an economist?

4 A. That is right.

5 Q. And you are not an expert in mine finance?

6 A. That is right.

7 Q. And you have not analyzed the
8 **profitability of the Questa Mine?**

9 A. Correct.

10 Q. You have made no analysis of Molycorp's
11 **ability to borrow funds or access capital markets at**
12 **any particular point in time?**

13 A. I have read the history of those things
14 but I have not performed an expert analysis of them.

15 Q. And you have, likewise, made no analysis
16 **of the capital resources available to Molycorp at**
17 **any particular point in time, including from other**
18 **mines or facilities that Molycorp may have owned?**

19 A. Again, I've read the history of those but
20 I've not conducted an analysis as a finance expert.

21 Q. And you have undertaken no study of
22 **molybdenum markets, molybdenum prices or molybdenum**
23 **sales at any particular point in time?**

24 A. Correct.

25 Q. And specifically, you haven't analyzed

1 **Molycorp's molybdenum sales?**

2 A. Correct.

3 Q. And you performed no expert analysis?

4 A. Correct.

5 Q. Okay. At the end of this case, we are all
6 going to forget how to pronounce molybdenum.

7 And lastly, Doctor, you have made no study
8 of the economic effects or benefits of the Questa
9 Mine and you're offering no such opinions here
10 today, correct?

11 A. Correct.

12 Q. Now, let's start off --

13 A. I might add, if I may --

14 Q. Sure.

15 A. -- especially at the front end of that
16 list of professions in which I am not an expert, I
17 am an expert in the history of those kinds of
18 activities.

19 The legal environment that mining
20 companies operated in, mining engineering,
21 metallurgic engineering, but I don't hold myself out
22 as an attorney, for instance.

23 Q. And you made that clear in your direct
24 testimony, and I appreciate that.

25 Now, in your direct testimony, you discuss

1 Federal land use law, and we've heard about some of
2 that with Mr. Fredley.

3 In your direct testimony, you opine that
4 you see no evidence that the Federal Government
5 assisted or contributed to the development of the
6 Questa Mine; is that generally correct?

7 A. As a direct participant, yes.

8 Q. Now, in your testimony, you do discuss the
9 Federal mining laws and, in particular, the Mining
10 Act of 1872, correct?

11 A. Yes.

12 Q. And that law allowed persons to enter
13 Federal land, stake claims, explore valuable
14 minerals, extract those minerals, sell them for a
15 profit, and if the statutory conditions are met,
16 convert that land to their own private ownership,
17 right?

18 A. Correct.

19 Q. Now, the U.S. laws are not compelled to
20 open mineral lands for Federal exploration in this
21 manner.

22 It chose to do that, right?

23 A. That was a decision by Congress.

24 Q. And since the mining law of 1872, Congress
25 has, from time to time, withdrawn some public lands

1 from the kind of mineral entry I just described,
2 right?

3 A. Correct.

4 Q. It created National Parks, Yellowstone,
5 Yosemite, right?

6 A. Yes.

7 Q. And it has closed and preserved wilderness
8 areas?

9 A. Yes.

10 Q. It included some right around the Questa
11 Mine, right?

12 A. Yes.

13 Q. And the Wilderness Act of 1964, as we have
14 discussed previously, gave holders of unpatented
15 mining claims a grace period of, I want to say it
16 was 20 years to make a discovery or forfeit their
17 claim, right?

18 A. Yes. Recognizing that had the Government
19 tried to nullify those claims immediately, that
20 would qualify as a taking.

21 Q. So instead, it nullified them 20 years
22 later?

23 A. Gave the mining companies or the holders
24 of those claims, a good faith time period to see
25 whether they actually were mineralized or not.

1 Q. Now, despite being able to withdraw land
2 or make them wilderness areas and such, Congress
3 did, as we know from this case, open many Federal
4 lands, including the land at Questa, for exploration
5 and development for resources, such as molybdenum,
6 correct?

7 A. Yes, metals generally.

8 Q. And in your view, Doctor, the
9 United States allowed individuals and companies an
10 exclusive and practically unfettered right to
11 explore, develop and operate mines on Federal land.
12 That is your view, right?

13 A. Yes. As long as they obeyed State, Local
14 and Federal laws, yes.

15 Q. Now, a mine claimant can extract and sell
16 minerals from an unpatented mining claim, which is
17 land still owned by the Federal Government, without
18 paying royalties to the Government, right?

19 A. Correct.

20 Q. And the United States erected this
21 structure purposefully to incentivize and encourage
22 the exploration and prompt development of mineral
23 resources on Federal land, right?

24 A. Recognizing that the Government did not
25 want to be in the mining business itself and owning

1 the resources, which was the practice in most other
2 countries.

3 Q. So that is a yes, right?

4 A. That is a yes, yes. Decided to put this
5 whole industry in private hands.

6 Q. And so through the procedures and
7 protections, that we've discussed, established under
8 the mining laws, the Government facilitated mining
9 activity.

10 A. In that it created a legal structure in
11 which private mining activity could take place, yes.

12 Q. Which, in turn, facilitated that mining
13 activity.

14 A. Yes, as I said.

15 Q. And it did so in order to make resources
16 on Federal land available to the public for economic
17 development, correct?

18 A. Yes, the economic development of the
19 nation.

20 Q. And, in fact, it's been the policy, and
21 you just said this, in other words, it's been the
22 policy of the U.S. to encourage the development of
23 Federal mineral lands to put those lands and
24 minerals to use.

25 A. I think a more accurate way of saying it

1 would be that it was the policy of the Government to
2 put the mining industry in private hands. And
3 recognizing that the Government did not want to do
4 all of the survey work to figure out where the
5 mineral lands were, it would leave that task to
6 private parties, as well, and make the public domain
7 and, in time, National Forests available to private
8 parties to discover minerals, and if they found
9 minerals, to put those mineral lands in private
10 hands.

11 Q. But you would agree it has been the policy
12 of the U.S. to encourage the development of Federal
13 mineral lands?

14 A. To encourage a private mining industry.

15 Q. And you would further agree, I think, that
16 historically it was the policy of the Government to
17 interfere as little as possible in the conduct of
18 miners, as they explored, developed and exploited
19 these mineral lands, right?

20 A. Correct.

21 Q. Now, these laws that we have discussed, as
22 a general matter, protected Molycorp and the Questa
23 site as it developed, right?

24 A. Yes.

25 Q. You are not aware of any substantial

1 mining work at the Questa site before the claim --
2 before the claims were located under the mining
3 laws?

4 A. I am not.

5 Q. And, in fact, you have never heard of
6 anyone developing a molybdenum mine without the
7 protections of the Federal mining laws?

8 A. I have not, in the United States.

9 Q. Now, you would agree, Doctor, I believe
10 that mining companies, such as Molycorp, are more
11 likely to invest in developing a site, such as
12 Questa, with the protections afforded by the Federal
13 mining laws, right?

14 More likely with them than without them.

15 A. Yes, I understand from talking with people
16 in the mining industry that they generally like to
17 invest in mining enterprises in the United States
18 because the legal infrastructure here makes that
19 much less risky than in some other countries.

20 So I think the United States has worked at
21 trying to create that legal infrastructure, yes.

22 Q. All right. I think you are right.

23 And, in fact, would it be fair to say that
24 the mining laws were pivotal to Molycorp's
25 operations?

1 A. Well, Molycorp operated within the
2 United States, and the United States created that
3 legal structure. And so it would be like saying the
4 traffic laws of my city are pivotal for my being
5 able to drive around the streets of the city.

6 Q. Doctor, there can be a law on the books
7 that applies to a company but it is not really
8 pivotal it to that company's operation in an
9 existential way. I want to push you on that a
10 little bit.

11 Would you agree that the mining laws were
12 pivotal in an existential way to the development of
13 the Questa Mine?

14 A. In the sense that the whole legal
15 infrastructure of our country is pivotal to what we
16 all do, day in and day out, if we are a law-abiding
17 citizen.

18 Q. That is a bit of a duck, Dr. Quivik.

19 A. I am trying to get at, understand what you
20 mean by pivotal.

21 Q. Let's put it a different way.

22 A. I don't think it is in any way
23 extraordinary or distinctive.

24 Q. Okay.

25 MR. TODD: Could we pull up Paragraph 84

1 of Dr. Quivik's direct testimony, please.

2 Q (By Mr. Todd) Your sworn testimony in this
3 case, Doctor, is that Molycorp's unpatented mining
4 claims and mill sites, which of course were located
5 under the mining laws, right, were pivotal to its
6 operation, and Molycorp paid close attention to
7 locating and maintaining these claims.

8 You agree with that statement, right?

9 A. Yes.

10 Q. Okay. Now, the mining laws of 1872 is the
11 only Federal statute that incentivizes mining,
12 right?

13 A. There have been a variety of statutes that
14 have, in one way or another, addressed the mining
15 industry, yes.

16 Q. You are familiar with the Defense
17 Production Act of 1950?

18 A. Yes.

19 Q. And Congress has, as we have heard
20 yesterday, enacted that at the outbreak of the
21 Korean War, shortly after World War II, to remediate
22 supply uncertainties that the nation suffered during
23 World War II, fair?

24 A. Fair.

25 Q. The Defense Production Act was intended to

1 increase the supply and diversify the supply base
2 for various critical and strategic minerals, right?

3 A. Yes.

4 Q. So two things there, both increase the
5 amount of stuff and also diversify the supply base,
6 which are slightly different, right?

7 A. Yes. And in the program we are talking
8 about, indirectly, through fostering exploration.

9 Q. Right. And the Defense Production Act
10 created the Defense Minerals Exploration Agency,
11 DMEA, which in turn made loans to partially fund
12 mining activities, right?

13 A. Yes.

14 Q. Okay.

15 A. No, to partially fund exploration
16 activities.

17 Q. Exploration activities. Thank you,
18 Doctor.

19 And now, DMEA loans -- obviously, we have
20 heard a lot of talk in the last two days about it,
21 DMEA loans.

22 You would agree, Doctor, they are not like
23 an ordinary bank loan, are they?

24 A. No.

25 Q. In fact, they are significantly more

1 favorable to the borrower than the ordinary bank
2 loan, right?

3 A. Yes.

4 Q. They were interest free?

5 A. Yes.

6 Q. They did not necessarily have to be
7 repaid?

8 A. Correct.

9 Q. And even if a discovery was made, the
10 borrower did not -- if the borrower did not develop
11 the discovery within ten years, the loan didn't have
12 to be repaid, right?

13 A. Correct.

14 Q. In fact, a borrower had to repay the
15 principal only if a discovery was made and developed
16 within ten years and the borrower recovered and sold
17 some ore, in which case royalties would be paid from
18 the proceeds, right?

19 A. Yes, from the property that was explored.

20 Q. From the discovery.

21 A. No, from the property that was explored.

22 Q. Okay. And the DMEA or Congress, when it
23 set up this program, and the DMEA, in turn, did not
24 insist on repayment at the point of discovery was
25 made, in order to avoid discouraging some potential

1 **borrowers, right?**

2 A. Yes. I think mining companies would have
3 been reluctant to enter in an agreement that
4 requires them to start mining immediately because
5 there are lots of factors that would determine
6 whether they would want to actually embark on a
7 mining project.

8 **Q. Right. They might make a discovery but**
9 **not have the capital on hand to develop it**
10 **immediately.**

11 A. Or they might, but the market conditions
12 might not be what they would like to see. They
13 might not have the technology in hand to do that. A
14 number of factors.

15 **Q. Right.**

16 **Because, as we have discussed and, as I**
17 **know you know, whether something constitutes ore in**
18 **a technical sense depends on whether it is**
19 **commercially valuable. And so it can change with**
20 **market fluctuation, right?**

21 A. Can be produced at a profit.

22 **Q. Okay. And so DMEA structured its loans in**
23 **a way to make them more attractive to potential**
24 **borrowers?**

25 A. In the mining industry, I think that is

1 fair to say.

2 Q. Yeah.

3 And given all this, this made a DMEA loan
4 a much less risky proposition for the borrower than
5 a bank loan would have been?

6 A. Yes.

7 Q. The risk of the loan, the possibility that
8 it did not result in a discovery, that fell entirely
9 on the United States, right?

10 A. Yes.

11 Q. And the Government offered these favorable
12 loans to incentivize mining companies to explore for
13 additional critical or strategic mineral resources,
14 right?

15 A. Yes.

16 Q. Now, as we have discussed, Molycorp
17 applied for and received a DMEA loan, which did, in
18 fact, result in the development -- in the discovery
19 and development of a mineral resource, right?

20 A. Yes.

21 Q. So in this instance, at least, the DMEA
22 achieved its purpose?

23 A. I should say indirectly resulted in the
24 development of a mineral resource, but yes, there
25 was a chain of events that followed.

1 Q. Okay. Let's change and focus in a little
2 more on mining claims, under the mining laws that we
3 discussed a few minutes ago.

4 The Government argues, and I am going to
5 paraphrase here, tell me if I'm misunderstanding the
6 case, but the Government asserts, basically, that
7 once Molycorp located unpatented mining claims,
8 which could include mill site claims, the Government
9 was essentially powerless to exercise any authority
10 over those lands to inhibit or control or direct the
11 creation or placement of mining waste; is that a
12 fair assessment?

13 A. That -- I don't want to speak for the
14 Government, but I think that characterizes my view,
15 and that is my view based on reading of the
16 understanding of mining companies in the period,
17 Federal officials in the period, Mr. Lindley, whom
18 we heard about in previous testimony, Mr. Fredley's
19 testimony, so, yes.

20 Q. Since you're in the box, I will gladly
21 take your view and work with that. Okay, sir?

22 A. Okay.

23 Q. Now, yesterday, with Mr. Fredley, we did
24 hear the term paramount proprietor used to describe
25 the Government's relationship with Federal lands.

1 You are familiar with that term?

2 A. Yes.

3 Q. And you don't disagree with -- putting
4 aside any question of what specific powers the
5 Government has, you don't disagree that at the end
6 of the day the United States continues to own land
7 on which there have been located unpatented mining
8 claims?

9 A. Well, since we are talking about details
10 here, I think it would be more accurate to say that
11 the Government holds the title, but the mining or --
12 the mining claimholder owns virtually all of the
13 other rights, and those are property rights, and the
14 claimholder owns all of those rights.

15 Q. Okay.

16 A. The only thing left in the Government's
17 hands is the title.

18 Q. So your testimony is that with respect to
19 land, on which there are unpatented mining claims,
20 the Federal Government continues to hold the title
21 to that land?

22 A. Yes.

23 Q. Okay. Now, an unpatented mining claim
24 does not give fee simple-type ownership to a
25 claimholder, does it?

1 A. Correct. The Government holds the title.
2 The claimholder owns virtually everything else.

3 **Q. And an unpatented claimholder's rights are**
4 **contingent on the performance of certain tasks,**
5 **right?**

6 A. If the claimholder wants to obtain a
7 patent and eventually obtain title to that land,
8 there is a series of steps that the law requires the
9 claimholder to go to, to eventually get title, yes.

10 **Q. A claimholder has to pay an annual fee?**

11 A. No, the claimholder has to pay -- perform
12 what is called assessment work, spend \$100 a year on
13 exploration and development of the claim.

14 **Q. You don't understand that there has ever**
15 **been a requirement that a claimholder pay an annual**
16 **fee?**

17 A. I don't recall that in the law, no.

18 **Q. Okay. But as you have mentioned, a**
19 **claimholder does have to spend a certain amount of**
20 **money annually actively working and developing the**
21 **claim?**

22 A. Yes, and be able to document that.

23 **Q. Okay. And if they don't actively work the**
24 **claim, the unpatented mining claim can be**
25 **invalidated, correct?**

1 A. Correct.

2 Q. And in that instance, whatever rights the
3 claimholder holds, would revert back to the U.S.,
4 right?

5 A. Yes.

6 Q. And you understand, Doctor, that one of
7 the key aspects of the bundle of property rights
8 that every first-year law student learns about, is
9 the right to exclude others?

10 THE COURT: Right to what? I'm sorry.

11 MR. TODD: The right to exclude others.

12 A. Yes.

13 Q (By Mr. Todd) A holder of an unpatented
14 mining claim does not have a general right to
15 exclude others from the land, do they?

16 A. Are we talking about mining claims in the
17 public domain or mining claims in National Forest?

18 Q. Well, if you think the answer is
19 different, I will take the answer for both.

20 A. In the National Forests, there is a limit
21 to which a claimholder has rights to that parcel of
22 land. It has rights only for the purposes of
23 exploring, developing and mining minerals.

24 And so if this is a National Forest and
25 there are trees growing on the mining claim, the

1 claimholder can cut trees, if the claimholder is
2 going to use those trees in furthering its mining
3 operation, but it could not cut trees for commercial
4 purposes, for instance.

5 Q. And in this case we are in a National
6 Forest, right?

7 A. Yes.

8 Q. So let's stick with that answer.

9 And so, no general right to exclude and no
10 unlimited use of surface forests, right?

11 A. Can you repeat the question?

12 Q. Let me break them out.

13 The question I had asked you originally
14 was whether the holder of an unpatented mining claim
15 has a general right to exclude others from that
16 claim.

17 And if I understand your answer correctly,
18 you said in a National Forest an unpatented mining
19 claimholder's rights to exclude is limited.

20 I think that is what you said.

21 A. I am trying to think through that because
22 there are a lot of different ways of excluding. For
23 instance, the holder of the claim can exclude other
24 people who might want to come on to the claim and
25 explore or develop a mine. And --

1 Q. Because the holder -- sorry to
2 interrupt -- the holder of the claim has an exclusive
3 use of that land for mining purposes?

4 A. Yes.

5 Q. Okay.

6 A. And if the exploration and development had
7 reached the point at which the mining -- the miner
8 had a lot of improvements on the site, I can
9 imagine -- I haven't seen these details spelled out
10 anywhere, but I can imagine, for practical purposes,
11 that the miner could put a fence around that
12 property and exclude others, even if they weren't
13 intent on trying to be a claim jumper.

14 Q. We discussed this at your deposition that
15 building a fence around a big open pit would be a
16 good safety idea, right?

17 A. Yes.

18 Q. And that is why I asked the question, as I
19 did, that there isn't a general right to exclude.
20 There may be some specific bases to exclude, such as
21 for mining purposes, but not a general right to
22 exclude.

23 Like no one can come up on this mining
24 claim at all.

25 A. Well, it would be pretty much up to the

1 claimholder to decide that, I think.

2 Q. Okay. And the other aspect of your
3 answer, when I confused you with my long, rambling
4 question, that you mentioned timber.

5 And to draw that out, an unpatented mining
6 claimholder can't harvest the surface timber and
7 sell it commercially but they can use timber on the
8 claim to support their mining, right, such as
9 timbering a mineshaft?

10 A. Yes.

11 Q. But the United States can enter land where
12 there is an unpatented mining claim, harvest the
13 timber and sell it commercially, right?

14 A. In a National Forest, yes. That is what
15 the Forest Service was established to do, is to
16 manage those resources, the surface resources.

17 Q. And the holder of an unpatented mining
18 claim can't operate a business other than a mine.
19 For example, cannot operate a livestock grazing
20 business or a saloon that is unrelated to the mining
21 activity, right?

22 A. Correct.

23 Q. But someone who owned that land in fee
24 simple could do these things as long as they are
25 consistent with State zoning law, right?

1 A. Yes.

2 Q. And you would agree, Doctor, I think, that
3 even mining activity on unpatented mining claims is
4 subject to reasonable regulation by the Federal
5 Government?

6 A. If the Federal Government passes laws or
7 establishes regulations that regulate industry, then
8 I think a mining operation would qualify as the kind
9 of industry that is being regulated by the
10 Government.

11 Q. Okay. And that is fair, laws generally
12 apply to mining operations.

13 But you are familiar with the Organic Act
14 of 1897, are you not?

15 A. Yes.

16 Q. And that is the Act which created and
17 established what ultimately became the U.S. Forest
18 Service?

19 A. Yes.

20 Q. And the Organic Act provides that the
21 rights of persons to locate mining claims on forest
22 lands should not be unreasonably burdened, right?

23 A. Correct.

24 Q. And so the converse of that, as you agreed
25 with me at your deposition, is that mining claim

1 activities on Federal lands -- sorry -- mining
2 activities on Federal lands may be reasonably
3 burdened?

4 A. That would be the implication.

5 Q. And the Forest Service has, in fact,
6 issued regulations regulating and restricting mining
7 activities on Federal forest lands, right?

8 A. Over time, yes.

9 MR. TODD: So let's look at U.S.
10 Exhibit 276, please. Could we pull that up, Patty?

11 Q (By Mr. Todd) Do you see the document on
12 the screen in front of you, sir?

13 A. Yes.

14 Q. Have you had a chance to review this
15 letter? Do you recognize this document?

16 A. I see the date and that it is addressed to
17 Molycorp, but I don't know who it is from and I have
18 not seen enough yet to know what this one is about.

19 MR. TODD: Patty, let's go to the end of
20 the next page.

21 Q (By Mr. Todd) Doctor, do you see the
22 letterhead at the top, it is from the Forest Service
23 and the Department of Agriculture?

24 A. Yes, the local ranger station.

25 Q. Which is right down the road from the

1 mine.

2 A. Correct.

3 Q. It is dated January 12, 1973?

4 A. Right.

5 Q. Which was right in the middle or towards
6 the end of the four years it took to consummate the
7 land exchange?

8 A. Correct.

9 MR. TODD: And if we flip to the next
10 page, Patty, or the very end of the letter.

11 Q (By Mr. Todd) We will see it is from John
12 S. Hart, District Forest Ranger.

13 Do you see that?

14 A. Yes.

15 Q. And Mr. Dewey spoke about knowing Mr. Hart
16 and the good relationship the mine had with him.

17 Do you recall that testimony?

18 A. Yes.

19 MR. TODD: Let's go back to the first
20 page.

21 Q (By Mr. Todd) And, Doctor, I am perfectly
22 happy that, as you said, you have not reviewed this.
23 I am perfectly happy to let you read it, if you
24 would like.

25 If you just direct Patty, over here, she

1 **can scroll it for you.**

2 A. Okay. You can scroll down a little bit
3 more.

4 You can continue.

5 Okay. Can we continue that sentence to
6 the next page, please? Okay.

7 Okay. All right. Thank you.

8 **Q. Thank you, Doctor.**

9 I don't usually have people read entire
10 documents on the stand but as you said, you have not
11 seen that before.

12 A. I have seen this before.

13 **Q. Oh, okay. I thought you said you hadn't.**

14 A. I just couldn't see by the title and
15 wanted to be reminded of what the whole letter was
16 about.

17 **Q. Fair.**

18 Dr. Quivik, in this letter, you would
19 agree, that the Forest Service told Molycorp that
20 from then forward it would have to get a special use
21 permit from the Service anytime it wanted to cut an
22 access road or to drill on an unpatented mining
23 claim?

24 A. Yes.

25 **Q. Okay. And it references Federal**

1 regulations that were adopted to institute that
2 requirement?

3 A. Yes.

4 Q. Do you happen to know what legal authority
5 the Forest Service cited for those regulations?

6 It is not in the letter. I was wondering
7 if you knew.

8 A. Okay. I don't. I -- this is in the early
9 '70s, right when a lot of environmental regulations
10 were beginning to be developed by various Federal
11 agencies, and so it is not at all surprising to see
12 that the Forest Service is going to take greater
13 interest in administering its surface resources.

14 And building access roads would be part of
15 that administrative mandate for the Forest Service,
16 under the Organic Act, of course, 1897, yeah.

17 Q. Would it surprise you if that was the
18 authority the Forest Service cited?

19 A. No.

20 Q. And this letter sets out the process for
21 applying for a special use permit and whether or not
22 one would be approved?

23 A. Yes.

24 Q. And so under this regulation, the Forest
25 Service officials would be reviewing Molycorp's

1 proposed activities anytime it wanted to cut an
2 access road or drill on one of its own unpatented
3 mining claims?

4 A. Yes.

5 Q. And special use permits, as you know, can
6 sometimes take months, if not years, to issue,
7 right?

8 A. Yes.

9 MR. TODD: Your Honor, I move to admit
10 USX276.

11 THE COURT: Any objections?

12 MR. HARRISON: No objections.

13 (Exhibit admitted, USX276.)

14 Q (By Mr. Todd) The following year, the
15 Forest Service issued regulations, much more
16 expansive regulations, that required mines operating
17 in Federal forests to submit a plan of operations
18 for Forest Service approval, right?

19 A. Yes.

20 Q. And a plan of operations had to detail the
21 entire operation, including the steps it would take
22 for environmental protection, which would include
23 waste deposition, right?

24 A. I don't recall waste deposition being
25 named in that statute. I do know that it was for

1 purposes of allowing the Forest Service to assess
2 how the mining activity would impact the resources
3 that the Forest Service was administering, the
4 surface resources.

5 And it was very clear that the purpose was
6 not to tell the mining companies how to conduct
7 their mining activities.

8 Q. But part of a mining claim -- and we can
9 pull up the regulation if we need to -- but it does
10 specifically require the mine to submit an
11 environmental plan, the steps they will take for
12 environmental protection?

13 A. I believe that is the language, yes.

14 Focused on the surface environment that
15 the Forest Service was administering.

16 Q. And in order to operate at all, a mine
17 needed to have a Forest Service approved plan or a
18 Forest Service approved dispensation from the
19 requirement to have a plan, right?

20 A. Correct.

21 Q. And as you know Federal agencies must
22 identify when they promulgated regulations, must
23 identify the statutory authority that empowers them
24 to issue those regulations, right?

25 A. Yes.

1 Q. And you know, Doctor, that for those 1974
2 regulations, the one statute the Forest Service
3 invoked was the Organic Act of 1897, right?

4 A. Yes.

5 Q. Now, let's shift gears and shift
6 locations. Let's go underground.

7 There is a disagreement in this case,
8 Dr. Quivik, about who was using what to explore for
9 what way -- that was a mouthful.

10 But you understand there have been
11 competing views as to when Molycorp was using
12 diamond drilling and when it was exploring for
13 low-grade ore, right?

14 A. I wouldn't have thought there was a
15 disagreement but if you point it out to me, we can
16 dig into it.

17 Q. You sat in the courtroom, you haven't
18 heard witnesses and lawyers sparring over when
19 diamond drilling was used and when low-grade ore was
20 searched for?

21 A. Yeah, I know what you are referring to.

22 Q. Okay. Now, let me start with some things
23 I think we will all agree on, and that is with the
24 original underground mine, just a few questions
25 around that.

1 There is no dispute, is there, that
2 Molycorp used drifting and crosscutting, tunneling
3 methods in the original underground mine to mine ore
4 and to explore for ore?

5 A. That is correct.

6 Q. And we know that the original underground
7 mine did not use diamond drilling to explore for
8 ore?

9 A. Correct.

10 Q. In fact, we know from an article that he
11 wrote in the 1930s, that Mr. J.B. Carman, the
12 manager of the mine, felt that diamond drilling was
13 an untrustworthy means of searching for high-grade
14 ore?

15 A. Correct.

16 Q. Then we come to the 1954 to 1956 period,
17 and this is the dispute that I referenced a few
18 minutes ago, the Government contends that Molycorp
19 was searching for low-grade ore, using diamond
20 drilling during that period, and they pointed to
21 some documents and Chevron's witnesses have taken
22 the position that Molycorp was not searching for
23 low-grade ore and was not using diamond drilling in
24 those years. And we have pointed to some documents.

25 And you have seen all of them?

1 A. Yes.

2 Q. You are the historian, and I am hoping
3 that you can clear this up for us.

4 Dr. Quivik, you agree, do you not, with
5 Chevron's position that from 1954 to 1956 Molycorp
6 was searching for more veins of high-grade ore and
7 not for a large low-grade ore body, correct?

8 A. Correct.

9 Q. And you also agree that, during those
10 years, Molycorp was still using the same mining
11 techniques it had used in the original underground
12 mine drifts and crosscutting?

13 A. Yes.

14 Q. Dr. Rigby testified yesterday about how a
15 mining company searches for a low-grade ore body
16 drifting and crosscutting horizontally, drilling
17 vertically and defining in three dimensions a large
18 block, right?

19 A. That it can analyze based on samples taken
20 from throughout that three-dimensional block, yes.

21 Q. Precisely. You take the core samples from
22 the drills, you take the channel samples or the knot
23 samples from the tunnels, you assay them and then
24 you can track the increasing or decreasing
25 concentration of the mineral interest as it moves

1 throughout that block, right?

2 A. Yes.

3 Q. Okay. And that then allows a mining
4 company to, while it may not be perfect, but to
5 understand, based on an estimate of the size of that
6 block, they can estimate the size of the ore in that
7 block?

8 A. Yes. The volume of the ore, yeah.

9 Q. The volume of the ore.

10 And if the grade is sufficient, they can
11 determine, by grade, I mean how high the percentage
12 is of the mineral of interest.

13 And based on the market price, at the
14 time, as we discussed earlier, they can determine
15 whether there is commercially-viable ore right in
16 the formal technical sense of ore?

17 A. Well, in the original exploration, they
18 wouldn't determine that definitively. They would
19 have a vague understanding of that block, and it
20 might suggest that it merits more intensive
21 exploration but they wouldn't have determined
22 immediately that the whole block qualified as ore
23 because there is too much space between the various
24 drill holes.

25 Q. That is a question of time and effort,

1 right?

2 The process I just described might take
3 place over a few months or over a space of years,
4 and at a point in time, with enough crosscutting,
5 drifting, tunneling or drilling, sampling and
6 assaying, you can get to the point that you can get
7 to the point of having reserves, right?

8 A. Yes.

9 Q. And by proving reserves, a mining company
10 will improve its access to investment capital or
11 bank lending?

12 A. Correct.

13 Q. Now, in your testimony, Doctor, you cited
14 the 1964 SEC filing that the Government has showed a
15 number of times, that is USX003?

16 A. Yes.

17 Q. Right.

18 Now that document wasn't in either of your
19 reports, right?

20 A. I don't recall that it was, correct.

21 Q. And you didn't mention that at your
22 deposition?

23 A. Again, that is my recollection. I hope
24 you're not setting me up for perjuring myself.

25 Q. Absolutely not.

1 A. Okay.

2 Q. I will represent to you that you discussed
3 it for the first time in your report.

4 A. Thank you.

5 Q. The Government has cited that document for
6 its contention, contrary to your testimony, that
7 there was drilling and exploration at Questa in '54.
8 You have heard that, right?

9 MR. HARRISON: Objection, Your Honor.
10 That misstates prior testimony.

11 THE COURT: The record will speak for
12 itself.

13 Q (By Mr. Todd) The Government has also
14 shown -- I will move on from that document.

15 The Government has also shown an article,
16 which is CX186, which is written by Mr. Robert
17 Carpenter in 1968.

18 Do you recall that?

19 A. Yes.

20 Q. Okay. Would you agree with me that in
21 1956 Mr. Carpenter shared the view of Mr. Carman,
22 who I mentioned earlier, that the appropriate method
23 of exploration at Questa was drifting and
24 crosscutting, looking for high-grade ore as opposed
25 to looking for low-grade ore?

1 A. He was certainly on board with the idea of
2 looking for high-grade ore. He also mentioned that
3 there were indications of this low-grade material,
4 so I don't recall that he actually stated it in an
5 either/or kind of proposition but he was on board
6 with the idea of looking for high-grade material.

7 **Q. Now, Molycorp applied for a DMEA loan in**
8 **December of 1956, correct?**

9 A. Correct.

10 **Q. And in your 99 pages of narrative**
11 **uninterrupted written testimony, by my count you**
12 **devoted about five paragraphs to the period from**
13 **1957 to 1960.**

14 A. If that is your count, I will go with it.

15 **Q. It flew by.**

16 MR. HARRISON: Objection, Your Honor. I'd
17 move to strike.

18 THE COURT: State your objection.

19 MR. AUGUSTINI: Your Honor, the commentary
20 is not necessary.

21 THE COURT: Overruled.

22 **Q (By Mr. Todd) It is your view, is it not,**
23 **Doctor, that the United States Government, the DMEA**
24 **here, exercised no control whatsoever over the**
25 **DMEA-funded exploration process; is that right?**

1 A. In my understanding of the word,
2 "control," yes.

3 Q. Okay. I would like to talk through the
4 DMEA loan process generally, and we will do that
5 pretty quickly, and then we will talk about the
6 Molycorp loan specifically, okay?

7 A. Okay.

8 Q. The DMEA loan process began with the
9 submission of an application by the company seeking
10 to borrow money, right?

11 A. Right.

12 Q. In which they would describe the proposed
13 project?

14 A. Yes.

15 Q. These applications were then reviewed by
16 DMEA officials, which included mining engineers and
17 geologists, right?

18 A. Correct.

19 Q. Now, to clarify for His Honor, who may not
20 be as familiar with the DMEA as you are, yesterday
21 there was mention of various other Government
22 agencies.

23 Am I correct in understanding that the
24 DMEA had mining engineers and geologists who were
25 succumbed from, or double-hatted, from the Bureau

1 of Mines and the U.S. Geological Survey?

2 A. That is right.

3 Q. Okay.

4 MR. TODD: So that is why we were mixing
5 other agencies, Your Honor.

6 Q (By Mr. Todd) So these applications,
7 Dr. Quivik, they were assessed on paper and
8 sometimes on the ground by a field team?

9 A. Yes.

10 Q. And a field team, if one was involved,
11 would assess the applicant's capabilities, the
12 terrain, the geology, and generally, the conditions
13 on the ground, right?

14 A. Yes.

15 Q. And if the Government was interested, the
16 parties would then negotiate a contract?

17 A. Correct.

18 Q. And the Government, in those contracts,
19 would specify the work at some level of detail in
20 order to ensure that the company used reasonable and
21 appropriate methods to conduct the exploration?

22 A. The work was specified in the contract and
23 the work was also proposed by the applicant, so
24 there was this negotiation but the work was proposed
25 by the applicants and documented in the contract.

1 Q. And we saw that negotiation in this case,
2 right?

3 A. Yes.

4 Q. And what the parties, both would have to
5 agree it's the contract, right?

6 A. Correct.

7 Q. And the details would be written down, in
8 some level of detail, and then that is what the
9 Government was going to fund?

10 A. And that is what Molycorp was going to do.

11 Q. Precisely.

12 And we heard yesterday from Dr. Rigby and
13 I think from some other witnesses, that under the
14 DMEA program, Government engineers and geologists
15 would also supply substantial technical assistance
16 and advice, free of charge, to the operators.

17 You're familiar with that, right?

18 A. Yes.

19 Q. So a company borrowing money from the
20 DMEA, as we discussed earlier, could get a loan on
21 really good terms and free technical advice?

22 A. Yes.

23 Q. And DMEA contracts provided that at the
24 end of a project, if a discovery was made, the
25 Government could certify that discovery, right?

1 A. Yes. And it's important to remember that
2 the certification was for the Government's use only.
3 It was a public document, so a mining company could
4 use it for its purposes but the reason the
5 certification step is in there is for the
6 Government's purposes.

7 Q. That is interesting.

8 And we discussed earlier the obligation to
9 repay a loan and that was triggered by a
10 certification?

11 A. Could you repeat the question, please?

12 Q. I nailed it. Let me try it again.

13 Certification of a discovery, under the
14 contract, would trigger a borrower's obligation to
15 repay a loan through royalty payments, if there was
16 a development of a discovery?

17 A. Yes, it was the first step in the
18 triggering a two-step triggering process.

19 Q. And as we discussed earlier, royalties
20 would then be paid from the land?

21 A. Yes. From revenue generated by producing
22 from the land, yeah.

23 Q. Thank you. You are much more specific
24 than I am. I appreciate that.

25 MR. TODD: Your Honor, we are a few

1 minutes before 10:30. If you want to take a break
2 now, I have a natural stopping point.

3 THE COURT: We can take a break now. It
4 will be our morning break. That will be about 15
5 minutes, so that will be about 24 minutes before 11.

6 MR. TODD: Thank you, Your Honor.

7 (A recess was taken.)

8 THE COURT: You may be seated.

9 You may proceed.

10 MR. TODD: Thank you, Your Honor.

11 Q. (By Mr. Todd) Dr. Quivik, Molycorp
12 applied for a DMEA loan in 1967.

13 MR. TODD: Let's pull the application,
14 which is CX46.

15 Q (By Mr. Todd) This document has been
16 displayed in court previously, but we haven't really
17 worked through it in a systematic way.

18 So for the Court's benefit, I would like
19 to do that with you.

20 You see here, is this the first page of
21 Molycorp's application?

22 A. Yes.

23 MR. TODD: If we go to the next page,
24 Patty.

25 Q (By Mr. Todd) You see it was signed by

1 **Mr. J.B. Carman, who you have mentioned this**
2 **morning?**

3 A. Yes.

4 Q. **In the application --**

5 MR. TODD: If we go to Page 6 of 15 in the
6 PDF.

7 Q **(By Mr. Todd) And let me direct you,**
8 **Doctor, to the third paragraph down.**

9 And the last sentence there reads,
10 **"Exhaustion of the ore bodies below the tunnel**
11 **stopped production."**

12 Do you see that?

13 A. Yes.

14 Q. **So Mr. Carman acknowledges, in the**
15 **application, that at this point production of ore**
16 **from the mine has ceased?**

17 A. Correct.

18 Q. **And he actually notes that not once but**
19 **twice.**

20 MR. TODD: Patty, can we call out the last
21 paragraph on that page?

22 Q **(By Mr. Todd) He says, "As stated, no**
23 **production is forthcoming from any part of the mine**
24 **and no ore reserves are considered available."**

25 Do you see that?

1 A. Yes.

2 Q. So as of the time of this application, no
3 ore in the mine?

4 A. Correct.

5 Q. And to complete this paragraph, and this
6 was flagged yesterday, he also represented to the
7 Government that -- this is the last sentence here --
8 "No other exploration work is, for the present,
9 planned other than covered by this application."

10 Correct?

11 A. Correct.

12 Q. And this application refers to the
13 application being made to the DMEA for a loan,
14 right?

15 A. Yes.

16 Q. Dr. Rigby described yesterday, in his
17 testimony, that Molycorp, in its application,
18 proposed a program of drifting and crosscutting to
19 search for more high-grade veins.

20 You agree with that, right?

21 A. Yes.

22 Q. Molycorp didn't propose any diamond
23 drilling or any other kind of exploratory drilling
24 in its program?

25 A. Correct.

1 Q. And no form of systematic sampling?

2 A. Correct.

3 Q. I am going to paraphrase and skip a little
4 bit here to move us along, but you would agree, I
5 believe, and I think you acknowledged this in your
6 testimony, that the Government did not simply accept
7 Molycorp's proposal as written, right?

8 A. Correct.

9 Q. In fact --

10 MR. TODD: Could we pull up CX48, please.
11 And let's go to Page 6 of 10.

12 Q (By Mr. Todd) CX48, Doctor, is a
13 compilation of DMEA materials back and forth inside
14 the agency assessing the application. And I know
15 you have seen this before.

16 MR. TODD: Patty, let's call out the
17 second paragraph, first sentence.

18 Q (By Mr. Todd) This is a memo from the field
19 team, Dr. Quivik, who wrote, "In reviewing the
20 application prior to the examination, it was
21 apparent that the company's exploration program of
22 approximately \$450,000 was not based on known
23 geological data, and, therefore, was not warranted
24 in its entirety."

25 That was the DMEA field team's assessment

1 of Molycorp's proposal, right?

2 A. Right.

3 Q. And having objected to Molycorp's
4 proposal, the field team then went on to note that,
5 "There was data suggesting that there may be a large
6 and significant low-grade molybdenum body at
7 Questa."

8 Right?

9 A. Correct.

10 Q. And they suggested looking for that
11 instead?

12 A. Correct.

13 Q. And pursuant to that, it was the
14 Government that then suggested adding diamond
15 drilling and sampling to the exploration program,
16 right?

17 A. That is right.

18 Q. Now, the DMEA recognized at the time,
19 Dr. Quivik, did it not, that it was asking Molycorp
20 to undertake something that was entirely new and
21 different from what it had been doing before?

22 A. Yes. Not entirely new in the mining
23 industry but at that site, yes.

24 Q. That's an entirely fair point.

25 MR. TODD: Let's look at Chairman George's

1 supplemental memo, dated December 27, 1957, and that
2 is CX, the same packet, Page 4.

3 Let's call out the last paragraph, please.

4 Q (By Mr. Todd) And, again, this is a DMEA
5 official writing, and he notes, with the apologies
6 for reading a long paragraph, but follow along with
7 me, "It is suggested that the field examiners'
8 alternate program should be discussed with the
9 applicant during the examination.

10 "Judging from available information, the
11 milling facilities and probably the main addit would
12 not be able to handle large tonnages of ore,
13 therefore, the applicant may not want to participate
14 in an exploration program to search -- or project,
15 sorry, to search for large bodies of ore of lower
16 grade than have previously been mined because it
17 would require a considerable capital outlay to
18 expand the mine and surface plant to make the 0.5 to
19 0.75 percent MLS2 material commercially
20 exploitable."

21 That is consistent with what you disagreed
22 with, right? They were suggesting something
23 different at Molycorp, at Questa?

24 A. Did I disagree with something?

25 Q. Yeah, you agreed with me --

1 A. Oh, okay. I thought I heard you say
2 disagree.

3 Yeah, this is a nice summary of this stage
4 in the negotiation process.

5 Q. And a shift like this would also result in
6 a significantly larger amount of waste rock than the
7 operation that had been at the Questa site
8 previously, right?

9 A. Well, if they were to have developed an
10 underground block cave mining, it would not have
11 been significantly more waste rock, but it would
12 have been a larger operation, to be sure, than they
13 had been undertaking.

14 Q. You are distinguishing block cave from
15 open pit. But let me talk to you on block cave.

16 A block cave mine, developing a large
17 low-grade ore body would certainly produce much more
18 in the way of mine tailings than the prior
19 underground pick and shovel operation at Questa,
20 right?

21 A. That is correct.

22 Q. And an open pit mine would result in a
23 significantly larger amount of both waste rock
24 overburden and tailings?

25 A. Yes.

1 Q. And that would have been known and obvious
2 at the time to these DMEA officials, right?

3 A. Everyone in the mining industry.

4 Q. Now, we have heard testimony yesterday
5 that Molycorp was resistant to the Government's
6 proposal in 1957 that Molycorp search for low-grade
7 ore.

8 You don't disagree with that
9 characterization, do you?

10 A. No.

11 Q. You have looked through the field team's
12 engineering and geological report, which recounts
13 the negotiations, right?

14 A. Yes.

15 Q. And as described in that report, Molycorp
16 and Mr. Carman, in particular, weren't fully in love
17 with the Government's proposal when it was first
18 made?

19 A. That is right.

20 Q. And the field team described, at least one
21 of the meetings, one of the negotiation meetings as
22 being a fiasco, right?

23 A. Yes.

24 Q. Ultimately, however, the Government and
25 Molycorp agreed to an exploration program that

1 combined some of Molycorp's desire to tunnel
2 underground from its original proposal and the
3 Government's desire to search in a particular area
4 for low-grade ore using diamond drilling and
5 sampling, right?

6 A. Yes, a sort of compromised work plan that
7 both parties would agree to.

8 Q. Precisely. A compromised plan, and as any
9 new contract, neither side was completely happy,
10 meaning the negotiators did a good job, fair?

11 A. Sounds good.

12 Q. It was the field team that recommended
13 diamond drilling, right?

14 A. Yes.

15 Q. And the field team specified how the core
16 samples from those drills should be handled?

17 A. Yes.

18 Q. And they also recommended including
19 channel sampling, cutting a continuous strip along
20 the tunnel wall 3 inches wide and 1-inch deep,
21 right?

22 A. Yes.

23 Q. So the contract reflecting this
24 compromised program was executed in 1957?

25 A. Yes.

1 Q. May of '57.

2 And the contract included this joint
3 program that included drilling and sampling?

4 A. Yes.

5 Q. And the contract required Molycorp to
6 perform all of the work expertly, in a workmen-like
7 manner and in accordance with good mining standards,
8 right?

9 A. Yes.

10 Q. And the Government was entitled to inspect
11 the workings, right?

12 A. Correct.

13 Q. And they could inspect the workings to
14 make sure that the work was being performed in an
15 appropriate manner, right?

16 A. Yes, particularly the work for which
17 Molycorp would seek the Government's 50 percent
18 share.

19 Q. Precisely.

20 A. Yeah.

21 Q. Precisely.

22 And Molycorp had to keep books and records
23 that the Government could review?

24 A. Yes.

25 Q. And Molycorp was required to make monthly

1 reports detailing the work it had performed under
2 the contract and including all of the sampling data,
3 right?

4 A. Yes, if it wanted to be paid.

5 Q. Exactly.

6 And these requirements allowed the U.S. to
7 confirm that Molycorp was implementing the program
8 according to its terms, right?

9 A. Correct.

10 Q. So they knew whether to pay?

11 A. Correct.

12 Q. The work under the program, to be funded
13 under the program, is set forth in detail in an
14 Exhibit A to the contract, right?

15 You are familiar with that?

16 A. Yes.

17 Q. And that Exhibit A identified the
18 drifting, the crosscutting, the drilling, and the
19 sampling we have discussed?

20 A. Yes.

21 Q. It specified precisely how diamond drill
22 holes were to be drilled?

23 A. Yes.

24 Q. It specified the size of timbering in the
25 drifts and crosscuts?

1 A. Yes.

2 Q. It specified that drill core samples
3 should be separated into 10-foot sections?

4 A. Yes.

5 Q. It specified the size of the drill
6 stations to be constructed underground?

7 A. Yes.

8 Q. Now a drill station is a cutout from a
9 tunnel wall that leaves enough space to get the
10 drill in and extract the 10-foot core, right?

11 A. Right. Without interfering with traffic
12 along the drift.

13 Q. Precisely.

14 And the contract also specified how
15 channel samples would be taken and how those samples
16 would be handled, assayed and preserved, correct?

17 A. Yes.

18 Q. And these things were all subject to
19 Government approval?

20 A. To make sure that Molycorp was doing what
21 it said it would do in the contract, yes.

22 Q. Okay. Do you recall -- we can pull it up
23 if we need to -- but the contract provides, "the
24 location, direction, inclination, extent and method
25 of sampling the work under the contract are subject

1 to Government approval"?

2 A. Yes.

3 Q. And as you have noted a few times, under
4 the contract the Government agreed to pay 50 percent
5 of the work specified in the contract?

6 A. Yes.

7 Q. The Government had no obligation to pay
8 for work not specified in the contract?

9 A. Correct.

10 Q. Right.

11 And if the work deviated from the
12 contract, the Government could refuse to pay?

13 A. Correct.

14 Q. If the work was performed in a manner
15 unsatisfactory to the Government, the Government
16 could refuse to pay?

17 A. Yes.

18 Q. And if the Government --

19 A. Under the terms of the contract.

20 Q. Precisely, thank you.

21 And if the Government, in its sole
22 discretion, concluded that the program had failed to
23 achieve anticipated results and a discovery was not
24 likely, the Government could terminate the contract,
25 right?

1 A. During the contract, yes.

2 Q. So the DMEA program wrapped up in June of
3 1960.

4 Does that sound right?

5 A. Yes.

6 Q. And at the conclusion of the program, and
7 we have already seen these documents in court, both
8 Molycorp and the DMEA submitted final reports
9 documenting the discovery that had been made as part
10 of the program?

11 A. Yes.

12 Q. And the DMEA's final report, wouldn't you
13 agree, recognized that, "it did recognize that
14 considerable exploration will still have to be done
15 before completed evaluation of the molybdenum
16 reserves and potential for this property can be
17 made."

18 Right?

19 A. Yes.

20 Q. And that was your point earlier, in an
21 early stage of a project, you may not yet know
22 enough to say we have got ore?

23 A. Right.

24 Q. Okay. Nonetheless, the DMEA's final
25 report, the technical experts did recommend that,

1 "Because of the significant tonnage of potential
2 molybdenum ore found as a result of the exploration
3 carried out under the contract, it is recommended
4 that the property be certified as a discovery"?

5 A. Yes.

6 Q. That is what they reported. Okay.

7 And as we have discussed in court, in
8 January of 1961, the Federal Government did, in
9 fact, certify a discovery?

10 A. Yes.

11 Q. Okay.

12 MR. TODD: Could we bring up CX113,
13 please.

14 I am not sure we have actually shown the
15 certification yet, Your Honor, but here it is.

16 Q (By Mr. Todd) Dr. Quivik, this is the
17 Federal Government's certification of the discovery
18 at Questa.

19 A. Yes.

20 Q. Okay. And you noted earlier that the
21 Government wants this certification for its own
22 internal purposes but you would also agree that
23 simple common sense suggests that with a
24 certification like this in hand, a mining company is
25 more likely to be able to borrow money than without

1 **such a thing, right?**

2 A. This would be a nice document to have when
3 approaching a bank or other finance.

4 Q. With the certification in hand, Molycorp
5 did, in fact, borrow money for further exploration
6 and delineation of the ore body at Questa, right?

7 A. Yes.

8 Q. In fact, and I think you noted this in
9 your testimony, this ability to borrow was critical
10 because Molycorp heavily financed the program,
11 putting in very little of its own capital, right?

12 A. That is right.

13 Q. And Molycorp used the funds it borrowed to
14 delineate the ore body, right?

15 A. Yes.

16 Q. And you are not aware, Doctor, of any
17 document that indicates definitively that Molycorp
18 would have spent millions of dollars to delineate
19 the ore body if it had not already had the body of
20 knowledge developed during the DMEA program?

21 A. I can't say that they would have, but I
22 should add that I take issue with the idea that they
23 would not have, and three of Chevron's witnesses
24 have made the point that they would not have but for
25 the DMEA program.

1 And we have some testimony yesterday that
2 suggested the best place to drill for oil is in an
3 oilfield and mining companies knew that that was the
4 case. If Molycorp didn't want to, other mining
5 companies could very well have been interested in
6 doing that.

7 And we have Dr. Rigby's testimony that
8 options available to Molycorp could have been
9 entering a joint venture or I believe he made one
10 other option that was possible, but for instance,
11 Molycorp could have sold the property to another
12 mining company.

13 So I think it is impossible to say
14 definitively that that discovery would not have been
15 made absent the DMEA loan. As an historian, I can't
16 say that it likely would have but I think the
17 chances are pretty good, given mining history in the
18 United States.

19 **Q. As an industrial historian, you can't**
20 **testify definitively either way?**

21 A. I can say that testimony saying that they
22 definitely would not have, cannot be supported by
23 the evidence.

24 **Q. You can't say definitely would not have or**
25 **definitely would have?**

1 A. I am not saying definitely would have, I
2 am saying definitely would not have.

3 Q. As an industrial historian, you can't say
4 definitively either way?

5 A. Right. But I am suggesting that there is
6 a very good likelihood that it would have been
7 discovered.

8 Q. You are speculating it might have been.

9 A. Right, I am speculating.

10 Q. Through its exploration, Molycorp then
11 moved from having indicated ore, which is the term
12 the DMEA used, to ultimately having reserves at
13 Questa?

14 A. Yes.

15 Q. And it then spent tens of millions of
16 dollars more to build the mill, the infrastructure
17 and developed the open pit for production, right?

18 A. Yes, based on a sequence of events that
19 discovered material that was not at all exploratory
20 with the DMEA.

21 Q. Right.

22 We're following the causal chain across
23 time?

24 A. Yes.

25 Q. Okay. And you agree that -- you would

1 **agree that Molycorp would not have spent this**
2 **additional money without having confirmed reserves?**

3 A. Correct.

4 And it wouldn't have if it had decided to
5 ignore the discovery of low-grade ore bodies and
6 insisted on looking for high-grade material as well.
7 That was always an option for Molycorp.

8 **Q. Looking for more high-grade?**

9 A. Yeah, uh-huh. If they were so intent on
10 that. They could have ignored this discovery and,
11 you know, continued looking for high-grade.

12 **Q. Fair point.**

13 But they didn't, and here we are.

14 A. Yeah, correct.

15 **Q. Let me shift gears to the tailings**
16 **pipeline and the impoundment, and I have just a few**
17 **questions on this for you.**

18 In your questioning, you talk about the
19 tailing pipeline, the special use permits and the
20 impoundments.

21 Obviously, the open pit began production,
22 Molycorp immediately, to dispose of the waste rock
23 and the tailings, right?

24 A. Yes.

25 **Q. And Molycorp used an approximate 9.5 mile**

1 long pipeline to move tailings down to the
2 impoundments that we saw earlier in Ms. Sitton's
3 testimony?

4 A. Right.

5 Q. And the Forest Service, as you know,
6 issued Molycorp a special use permit to operate that
7 pipeline.

8 A. To occupy that ground to operate it, yes,
9 sir.

10 Q. Because about half the distance, about
11 half of that 9.5 miles was Forest Service land,
12 right?

13 A. Right.

14 And the rest went across various other
15 kinds of land, including private land.

16 Q. Precisely.

17 I think somewhere in the record there is a
18 picture of the pipeline going right past the ranger
19 station?

20 A. Yeah.

21 Q. There is pipeline and there is the ranger
22 station?

23 A. Yeah.

24 Q. So the ranger knew about the pipeline?

25 A. Yeah.

1 Q. Okay. And the Forest Service has
2 acknowledged that, in its sworn testimony that has
3 been admitted in evidence in this case, that issuing
4 these special use permits was a discretionary act of
5 the Government. Forest Service personnel were not
6 required to grant them.

7 You don't agree with that testimony, do
8 you?

9 A. No.

10 Q. Okay. And you would agree that without
11 this special use permit, Molycorp would not have
12 been able to run the pipeline across Federal land?

13 A. Correct.

14 Q. And without the pipeline, Molycorp would
15 not have been able to operate the mill?

16 A. It needed a place to put tailings, so it
17 would have needed to convey tailings in some
18 direction or another with the pipeline, yes.

19 Q. Without the mill the mine wouldn't
20 operate?

21 A. Correct.

22 Q. Molycorp purchased the land for the
23 western impoundments in --

24 A. May I finish? Just a closing remark.

25 Q. I thought you were done.

1 A. The one thing that is missing is any
2 suggestion if it were a discretionary act on the
3 part of the Forest Service, on what basis the Forest
4 Service would have denied that special use permit.
5 And I have seen no suggestion of why the Forest
6 Service should have done so.

7 **Q. Well, the testimony from the Forest**
8 **Service is that this is a discretionary act that**
9 **could be granted or revoked in the discretion of the**
10 **Forest Service.**

11 **You wouldn't disagree with the Forest**
12 **Service sworn testimony, do you?**

13 A. No. All I am saying is that I'd like to
14 see a reason why, if it is discretionary, they
15 should have other than arbitrarily denying it.

16 **Q. The --**

17 THE COURT: And they would never do
18 anything arbitrarily.

19 MR. TODD: I would like to think so.

20 Mr. Fredley testified yesterday, Your
21 Honor, that Federal agencies always act in the
22 public interest.

23 THE COURT: Not always.

24 MR. TODD: I may not suggest that as a
25 finding of fact.

1 Q (By Mr. Todd) Molycorp, Dr. Quivik,
2 purchased the land for the western impoundment from
3 the United States in 1966?

4 A. Correct.

5 Q. And in deciding to sell the land to
6 Molycorp for use of a tailings pond, the
7 United States took into account the positive
8 economic benefits that the Questa Mine would have on
9 Northern New Mexico, right?

10 A. That was one of the factors, you know,
11 checking off all of the factors they had to look at
12 to see whether such a sale was allowable under the
13 law for selling public land.

14 Q. You have reviewed the appraisal report
15 that ultimately concludes, as we have heard this
16 morning, that the sale of the land to Molycorp for
17 use as a tailings pond was the highest and best use
18 of the land.

19 You have reviewed that document?

20 A. Yes. But I think people oftentimes think
21 industrial uses are higher uses than grazing, for
22 instance.

23 Q. Okay. And in that document -- I can pull
24 it up if we need to, but I am trying to move us
25 along -- the Government did note that expansion of

1 the diamond mine would be a major economic benefit
2 to the area and noted that the land is great,
3 indeed, for a tailings pond, right?

4 A. Correct.

5 Q. And the appraisal noted that this area of
6 New Mexico has been generally economically depressed
7 for many years, right?

8 A. Yes.

9 Q. And it noted that Federal and state
10 officials are making a concerted effort to find
11 means of stimulating the economy, right?

12 A. Yes.

13 Q. The appraiser noted the number of
14 employees who may be hired, salaries that may be
15 paid and, you know, the general economic stimulus,
16 right?

17 A. Yes.

18 Q. As we noted, concluded that the sale was
19 the highest and best use of the land?

20 A. Yes.

21 Q. Okay. Let's shift gears now to the land
22 exchange.

23 A. Before we do, one other thing that I think
24 is worth noting is that in looking at the procedure
25 the BLM went through in selling that land, I see

1 nothing to indicate that the BLM did anything
2 extraordinary because in addition to all the other
3 things, it would benefit the economy of Northern
4 New Mexico.

5 So that was not, as far as I can see, the
6 driving factor had that -- had this been a
7 prosperous area, there is every reason to believe
8 that the BLM would have made the sale anyhow. It
9 met all the criteria.

10 Q. Okay. But be that as it may, everything
11 that I just went through is in that appraisal
12 report, right?

13 A. That is correct.

14 MR. TODD: And for the record, that is
15 Chevron Exhibit 158, Your Honor, which is already in
16 evidence.

17 Q (By Mr. Todd) Now let's talk about land
18 exchange, which, as Mr. Dewey testified, is why we
19 are here today.

20 In your testimony, Dr. Quivik, you state
21 that Molycorp owned all the land in which Molycorp
22 operated its first underground mine, its open pit
23 mine and its second mine, the block cave mine.

24 Is that your understanding?

25 A. Yes.

1 Q. And you also testify that you have seen no
2 evidence that the United States imposed requirements
3 on where Molycorp is supposed to waste?

4 A. Correct.

5 Q. Now, you do understand that most of the
6 land on which the Questa Mine was developed was
7 originally owned by the United States?

8 A. Yes.

9 Q. And you do understand that, at different
10 times, Molycorp undertook exploration activities on
11 land that was still owned by the United States?

12 A. Land over which Molycorp had mining
13 claims, so it was acting legally.

14 Q. Okay. Right.

15 But that is still land that is owned by
16 the U.S. It has --

17 A. U.S. has title but Molycorp owned the
18 claims to those, owned all of the other property
19 rights.

20 Q. We can leave it to the Tenth Circuit,
21 Doctor, to determine whether having title over land
22 makes you an owner of that land --

23 A. Right.

24 Q. -- and I think they have already resolved
25 that issue, but you can maintain that distinction.

1 A. Right.

2 Q. You also understand that from time to time
3 Molycorp engaged in mining activities, including
4 drilling and tunneling on lands that were at the
5 time still owned by the Federal Government or as you
6 would like to say, to which the Federal Government
7 still owned title?

8 A. Yes.

9 Q. And operated tailings pipelines across
10 Federal land?

11 A. Yes, Forest Service land.

12 Q. And disposed of waste rock on lands owned
13 by the Federal Government?

14 A. Yes.

15 Q. Now, on Monday His Honor asked --

16 A. The Government owned title, yeah. They
17 owned it, almost sounds like you are trying to
18 suggest that Molycorp was somehow breaking the
19 law --

20 Q. No.

21 A. -- putting rock on --

22 Q. Not at all.

23 The question here is the implication of
24 the ownership.

25 A. Uh-huh.

1 Q. On Monday His Honor asked Mr. Dewey, when
2 he was testifying, about the placement of waste rock
3 on lands still owned by the United States.

4 A. Yes.

5 Q. And you would agree, would you not, that
6 the fact is that most of the waste rock at Questa
7 was placed on land when it was still owned by the
8 Federal Government, right?

9 A. I have seen those analysis and I have not
10 conducted my own analysis.

11 Q. Okay.

12 A. So I am taking those analysis as accurate.
13 I will agree with them.

14 Q. Okay.

15 MR. TODD: Let's pull up Paragraph 52,
16 please, of Dr. Quivik's testimony.

17 Q (By Mr. Todd) This is your sworn testimony
18 in this case, again, which I think answers His
19 Honor's questions.

20 "Most of the waste rock that Molycorp
21 generated and disposed of at the Questa site had
22 already been placed on the selected lands
23 (previously encumbered by Molycorp unpatented mining
24 claims), by the time the land exchange was completed
25 in 1974. Molycorp's general manager at the time

1 testified that in 1974 the waste-rock piles had
2 grown to approximately 80 percent of the size they
3 would eventually reach."

4 Did I read that correctly?

5 A. Yes.

6 Q. And that is your sworn testimony in this
7 case?

8 A. Yes.

9 Q. And you would agree, would you not, sir,
10 that, with respect to the land from the Federal
11 Government, that ultimately hosted the mine, that
12 all came through patenting, sales and land
13 exchanges?

14 A. Yes.

15 Q. So let's talk -- let's focus in now on the
16 big land exchange. There was more than one, but the
17 big one consummated in 1974.

18 You are familiar with that?

19 A. Yes.

20 Q. Okay. And Molycorp -- well, as we heard
21 in prior testimony, the discussions around that
22 started in January of '69, right?

23 A. Yes.

24 Q. Okay. But Molycorp submitted a formal
25 application for the --

1 A. Excuse me, discussions around just
2 narrowed on the land exchange, the possibility of
3 land exchange.

4 Q. The possibility that excluded the
5 possibility of land exchange?

6 A. Right. The discussions for looking for
7 ways to acquire rights to dump waste rock, as I
8 recall, started in '68 with the inquiry about a
9 special use permit.

10 Q. That is good of you to recall that
11 testimony.

12 And then Mr. -- I forget if it was Mr. --
13 Dr. Rigby or Dr. Fredley noted that there may have
14 been some discussions earlier in time about land
15 exchange.

16 But in any event, we have seen there was
17 the January '69 meeting between Molycorp and the
18 Forest Service --

19 A. Yes.

20 Q. -- where we have some documentation of a
21 suggestion of a land exchange?

22 A. Yes.

23 Q. So thereabouts.

24 Molycorp submitted a formal application
25 for that exchange in November of '69?

1 A. Right, correct.

2 Q. And prior witnesses have described the
3 circumstances leading up to the land exchange and so
4 just as a general matter, could let us set up,
5 Molycorp had discovered a bit of weakness in the
6 west wall, required the removal of a lot more
7 overburden, increased stricken ratio, a lot more
8 waste rock to dispose of, hence, the need for a lot
9 more land?

10 A. Right, yes.

11 Q. And in your testimony, you note that
12 Molycorp alone -- and this is your testimony,
13 Molycorp alone made the decision to keep operating,
14 right?

15 A. Yes.

16 Q. Okay. And you testified the Government
17 had nothing to do with that decision?

18 A. Correct.

19 Q. Okay. Now, Molycorp was aware -- I'm
20 sorry. The Government was aware of Molycorp's need
21 for additional land to dispose of this additional
22 waste rock, right?

23 A. Yes.

24 Q. And in all of those years, in those years,
25 you are not aware of any evidence that the

1 **Government recommended or told Molycorp you need to**
2 **cease operating, right?**

3 A. Correct.

4 **Q. Okay. Instead, the United States**
5 **ultimately provided more land to Molycorp to place**
6 **that waste rock, right, through the land exchange?**

7 A. Offered one avenue for Molycorp to obtain
8 title, knowing that Molycorp could obtain title by
9 staking mill site claims.

10 So knowing that under the Mining Law
11 Molycorp could get that land and recognizing that
12 the mill site option was the one by which they would
13 be able to do it.

14 So they offered the land exchange option
15 as one that would be beneficial to both parties.

16 **Q. Right.**

17 So to clarify, and this is in your direct
18 **testimony, in the Government's view, Molycorp had a**
19 **right under the Mining Laws to stake mill site**
20 **claims and use those for waste-rock disposal, right?**

21 A. Yes.

22 **Q. And instead, the Government proposed the**
23 **land exchange?**

24 A. Yes.

25 MR. TODD: Let's pull up, please, CX212.

1 No, that is not it. Let's try 211. 210.

2 If I just kept going, I would have got
3 there.

4 Q (By Mr. Todd) You have seen this document
5 before, right, Dr. Quivik?

6 A. Yes.

7 Q. This is an attendee list from this January
8 meeting and some notes by Jack Watson, Molycorp's
9 lawyer?

10 A. Yes.

11 Q. And the list notes the attendees attending
12 for Molycorp were Messers. Greslin, Lansing, Watson,
13 Torgerson and Crimes, right?

14 A. Yes.

15 Q. And for the Forest Service, Mr. Taylor,
16 Mr. Ashby, Mr. Taylor and Mr. Parde?

17 A. Correct.

18 Q. Now, the Forest Service is the lowest
19 level of district; is that right?

20 A. Yes.

21 Q. The Federal District Ranger, Mr. Hart, he
22 is the local guy for Molycorp?

23 A. Yes.

24 Q. And then above that, above the district,
25 is a forest, right?

1 A. A National Forest, yes.

2 Q. Here it is, the Carson National Forest?

3 A. Yeah.

4 Q. And then above the forests, the number of
5 forest aggregated into a region right?

6 A. Correct.

7 And here we are talking about Region 3,
8 which is headquartered in Albuquerque, right?

9 A. Yes.

10 Q. So this meeting wasn't taking place at the
11 local district or the forest, it was down here in
12 Albuquerque at the regional level?

13 A. Correct.

14 Q. And Mr. Taylor, according to the Forest
15 Service, I don't know if you actually know this, was
16 responsible for the -- he was the branch chief
17 responsible for land management across Region 3?

18 A. Yes.

19 Q. Okay. And Mr. Parde was the chief mineral
20 examiner for Region 3, is that right?

21 A. I forget his title. That may be true. I
22 remember Harvey -- Harv Ashby as a mineral examiner,
23 but I don't recall Parde's title. That may be
24 correct.

25 Q. And do you know whether Mr. Cutler was an

1 **Assistant Regional Forester?**

2 A. I don't recall his title either.

3 MR. TODD: I think those titles are shown
4 on CX211.

5 Can we just pull that up.

6 We can move on. That is not
7 consequential.

8 Q **(By Mr. Todd) This meeting happening in**
9 **Albuquerque, is it a significantly, relatively**
10 **senior level within the Forest Service, right?**

11 A. It looks like it, yeah.

12 Q. And a meeting like this -- well, as we
13 discussed at your deposition, Molycorp would have
14 met with the region because they were facing a
15 serious challenge, right?

16 A. Yes.

17 Q. Disposing of a larger volume of waste
18 rock, whether or not they had a right to, would have
19 a significant impact on Forest Service land and
20 Molycorp was being mindful of the Forest Service's
21 reaction, would you agree?

22 A. Yes, they had been working cooperatively
23 for decades.

24 Q. And there is a lot in the record that
25 documents that good relationship; is that right?

1 A. Yes.

2 Q. And it is nice to see that.

3 And so Molycorp came to Albuquerque, the
4 regional headquarters, to discuss possible ways of
5 finding land to dispose of this larger volume of
6 waste rock?

7 A. Yes.

8 Q. Now, a meeting at the region, and I don't
9 know your experience, I worked for the Federal
10 Government for a little while, and maybe I am just
11 channeling my experience, the meeting with senior
12 Government officials don't just spring forth, they
13 take some planning, right?

14 A. Yes.

15 Q. Particularly when you have got, you know,
16 several people here, four, five people on both
17 sides, all relatively senior, right?

18 A. Yes.

19 Q. And advanced planning would probably
20 include subjects to be discussed and who would
21 attend, right?

22 A. Yes.

23 Q. Now, according to the Forest Service's
24 sworn testimony in this case, Mr. Taylor had no
25 responsibility for the Questa operation himself.

1 Do you know if that is true?

2 A. I don't know that.

3 Q. Do you have any basis to disagree with the
4 Forest Service's testimony?

5 A. No.

6 Q. The testimony suggests that he was
7 responsible for land exchanges.

8 Do you know -- do have any reason to doubt
9 that?

10 A. No.

11 Q. Okay. And a former Forest Service
12 employee, who was deposed in this case, Mr. Roy
13 Grande, testified that Mr. Cutler handled all large
14 land exchanges.

15 Have you reviewed his deposition?

16 A. I have. I don't remember that he
17 specified Cutler but I will take your word for it.

18 Q. You don't have any reason here and now to
19 disagree with that, do you?

20 A. No.

21 Q. So the Government --

22 MR. TODD: Could we pull back up the 210?
23 Thanks.

24 Q (By Mr. Todd) So looking at the bottom of
25 the list, they showed up with a team of folks who

1 were ready to talk land exchanges.

2 A. Yes.

3 Q. Now, we know from Mr. Watson's notes at
4 the meeting, that Mr. Taylor, for the Forest
5 Service, suggested that the U.S. and Molycorp engage
6 in land exchange?

7 A. Yes.

8 Q. And Mr. Watson's notes record that
9 Molycorp agreed to prepare a description of the
10 lands that Molycorp wanted to receive and they would
11 provide that description to the Forest Service,
12 right?

13 A. Yes.

14 Q. And the Forest Service would then appraise
15 the land and make suggestions for the exchange?

16 A. Yes.

17 MR. TODD: Let's pull up 212, now, please.

18 Q (By Mr. Todd) In February -- we saw this
19 document yesterday.

20 In February of -- February 20th of 1969,
21 Mr. Watson wrote to Mr. Taylor, following up on the
22 January 28th meeting -- and you have seen this
23 letter before, right?

24 A. Yes.

25 Q. And Mr. Watson identified land that

1 Molycorp might want in an exchange?

2 A. Yes.

3 Q. And as per the meeting notes, he was
4 providing a description so the Government could
5 appraise the land, right?

6 A. Yes.

7 Q. And that is a requirement for an exchange,
8 right, appraisals and value for value?

9 A. Yes.

10 Q. And Mr. Watson also asked the Government
11 to confirm that it would identify parcels of private
12 land for Molycorp to buy land to trade to the
13 Government for the lands Molycorp wants, right?

14 A. Yes.

15 Q. Now, ultimately, as it turned out,
16 Molycorp suggested lands that it had an option on?

17 A. Offered lands, yes.

18 Q. Offered lands. I always get offered and
19 selected confused, so I try really hard not to use
20 them.

21 And part of the process, the exchange
22 process, the Forest Service did a survey, the
23 offered and the selected lands?

24 A. Yes.

25 Q. I can use them both together.

1 A. Excuse me?

2 Q. I can use both terms together.

3 And the surveys confirmed that the land
4 that were going to be given to Molycorp were
5 non-mineral, right?

6 A. Yes.

7 Q. And the regional forester here, this would
8 be Region 3 here in Albuquerque, found that the land
9 exchange was in the public interest?

10 A. Yes.

11 Q. Okay. Now, you would agree, would you
12 not, Dr. Quivik, that the United States benefited
13 from the land exchange?

14 A. If it was in the public interest, then,
15 yes.

16 Q. In exchange for the lands given to
17 Molycorp, the United States received two parcels of
18 land, right?

19 A. Yes.

20 Q. And those two parcels encroached on Forest
21 Service land, right?

22 A. I have heard the term "in holding." They
23 were surrounded by Forest Service land, and so they
24 were within the boundaries of the National Forest
25 but they were private land.

1 Q. And when -- and this is a matter of,
2 again, first year property law for a law student,
3 but when a landowner holds land that is surrounded
4 by Forest Service land, the Forest Service has to
5 support that private land, right?

6 A. Yes.

7 Q. By allowing access and utilities and such,
8 right?

9 A. That is my understanding.

10 Q. So the Forest Service likes to close up
11 those gaps?

12 A. Yes.

13 Q. So that was a benefit here?

14 A. Right. And that was the purpose of the
15 1922 Land Exchange Act to do that sort of thing.

16 Q. Great.

17 And the Government typically has an idea
18 whether it is a map in the office or whatever, but
19 they know where these parcels are and would like to
20 get them?

21 A. Presumably.

22 Q. The Forest Service also benefited from
23 transferring the selected lands to Molycorp, right?

24 A. Well, it -- those were lands that the
25 Forest Service couldn't really manage because they

1 had been covered with mining activity and so, in
2 exchange, the Forest Service got land that it could
3 administer as national forestry.

4 Q. And when you say they have been covered by
5 mining activity, they had been covered in some form
6 by waste rock, right?

7 A. Yeah, by mining activity.

8 Q. The Government also benefited, I think you
9 would agree, by alleviating itself of any need to
10 administer those acres?

11 A. Yes.

12 Q. And the Government officials avoided the
13 workload of having to process a bunch of individual
14 mill site claims?

15 A. Correct. As did -- as Molycorp.

16 Q. Okay. Now the Forest Service has
17 testified in this matter and submitted sworn
18 deposition testimony that it executed the land
19 exchange to transfer away lands that no longer
20 served Forest Service purposes.

21 Do you dispute that testimony?

22 A. No.

23 Q. Now, the purpose of the land exchange was
24 to provide land to Molycorp for use for waste-rock
25 disposal?

1 A. To provide an alternative means for
2 Molycorp acquiring title to that land.

3 Q. Okay. So that is a, yes, I think?

4 A. It is a yes, but they didn't just walk up
5 and say, Hey, we will give you some land so you can
6 dump stuff on it. They were already using it. They
7 had the rights to use it. Could have gotten it as
8 mill site claims. So the Forest Service was
9 offering an alternative means of getting title to
10 that.

11 Q. Let me phrase it this way, then.

12 The Forest Service knew what Molycorp's
13 plan was for the land, right?

14 A. Yes.

15 Q. That they would dispose of waste rock on
16 it?

17 A. Yes.

18 Q. And specifically, we're talking, the land
19 exchange was a big area but we are specifically
20 talking the slopes on the north side of the Red
21 River Valley where the three large rock piles stand
22 today, correct?

23 A. Yes.

24 Q. As part of the land exchange, the Federal
25 Government, the Forest Service in particular,

1 undertook an environmental assessment weighing the
2 pros and cons of the proposed exchange and
3 ultimately recommended it, right?

4 A. Correct.

5 MR. TODD: Let's take a look at CX281.
6 And again, we have seen this document before.

7 Q (By Mr. Todd) Dr. Quivik, you have reviewed
8 this document, right?

9 A. Yes.

10 Q. It's discussing a lot of things, right?

11 A. Yes.

12 Q. One of the things it discusses at some
13 length are the economic benefits that the Questa
14 Mine provided to Northern New Mexico, right?

15 A. Yes.

16 Q. The report discusses how economically
17 beneficial Molycorp had been up to that point for
18 the Town of Questa, right?

19 A. Yes.

20 Q. And for Northeast New Mexico, generally?

21 A. Yes.

22 Q. It noted that Molycorp was the largest
23 employer in Northern New Mexico?

24 A. Yes.

25 Q. It discusses the positive economic impacts

1 on Taos County, more generally?

2 A. Yes.

3 Q. It notes for the Town of Questa benefits
4 such as a new school, incorporation of the town, a
5 police department, a fire department, modernized
6 homes, those kind of things, right?

7 A. Yes.

8 Q. It also notes that the mine is supplying a
9 needed mineral resource for the nation?

10 A. I don't recall those words, but I will
11 take your word for it. I wouldn't be surprised.

12 Q. Okay. I can pull it up for you. It is in
13 the record.

14 A. Okay.

15 Q. Now, we saw back in that January '69
16 meeting that the Forest Service has to appraise the
17 selected lands before providing them to Molycorp,
18 right?

19 MR. TODD: Could we pull up, please,
20 CX259.

21 Q (By Mr. Todd) Dr. Quivik, you recognize
22 this document as the appraisal of the exchange
23 lands?

24 A. Yes.

25 MR. TODD: Could we go to Page 3, please.

1 If you would just call out the numbered
2 list at the top there.

3 This is a list to, quote, "Summary and
4 Facts and Conclusions."

5 Do you see that?

6 A. Yes.

7 Q. Dr. Quivik, who does this document state
8 is the owner of the selected lands?

9 A. Number one, the United States.

10 Q. And what did the appraiser conclude was
11 the highest and best use of this land?

12 A. Open pit mine dump.

13 Q. And the appraiser recommended that this
14 land be provided to Molycorp for that purpose,
15 right?

16 A. Yes.

17 Q. Okay. Thank you.

18 Okay. Last topic.

19 In your testimony, Dr. Quivik, you tell
20 the Court that after the discovery of the geological
21 weakness in the west wall of the open pit, you see
22 no evidence that the United States approved
23 Molycorp's revised mining plan in 1969 and that
24 Molycorp alone decided to keep mining with an
25 increase in stripping ratio.

1 Do you recall that testimony?

2 A. Yes.

3 Q. Now, through the land exchange, as we have
4 discussed, the U.S. provided land to Molycorp for
5 the placement of waste rock, right?

6 A. Yes.

7 Q. And you agree that without a place to
8 place the waste rock, the mine would have had to
9 shut down, right?

10 A. Yes.

11 Q. Now, the land exchange, as I think you
12 have already intimated, was not Molycorp's preferred
13 approach in January of '69, right?

14 A. Well, they were exploring mill site
15 claims.

16 Q. Right.

17 A. The Forest Service informed them that mill
18 site claims would be an option -- excuse me, a land
19 exchange would be an option to mill site claims.

20 Q. That meeting in January of '69, Molycorp
21 proposed to locate mill sites crossing the road on
22 the river and to use them to construct a waste drop
23 dump across the valley, right?

24 A. Yes, that is a separate issue, and the two
25 should not be conflated.

1 **Q. The land exchange and the mill site plan?**

2 A. No, the land exchange and where to place
3 the rock.

4 **Q. I am not sure I follow you, but I am going**
5 **to keep going.**

6 **Okay. But you don't --**

7 A. Excuse me, how to acquire land to place
8 waste-rock dumps and where to place the rock
9 should -- those two should not be conflated.

10 **Q. That is fair, because you could get land**
11 **and not put rock on it.**

12 A. Right.

13 And there were a variety of places that
14 were potential for placing the rock, and one of
15 them, an idea that Molycorp floated, was to fill the
16 Red River Canyon with waste rock. And a separate
17 issue was how was Molycorp going to gain title to
18 the land where it placed the waste rock.

19 So we have got lots of correspondence
20 about those possibilities but we have almost no
21 concrete record of what might have been entailed in
22 the idea, the concept of dumping waste rock in the
23 canyon.

24 And we don't really know how Molycorp
25 proposed to acquire land across -- across the river

1 from its mining operation.

2 Q. Okay. Well, I suspect we are going to
3 unpack all of that as we go through here.

4 Let's start with mill site claims.

5 A mill site claim is a type of claim that
6 could be located under the Mining Law of 1872,
7 right?

8 A. Yes.

9 Q. And it doesn't host mining itself, but
10 rather, it hosts activities that support mining on a
11 mining claim?

12 A. Correct.

13 Q. And those support activities could include
14 milling, roads, other support services, right?

15 A. Yes.

16 Q. And as you admitted forthrightly earlier,
17 it could include waste-rock storage, correct?

18 A. Yes. Or dumping.

19 Q. Or dumping.

20 And a mill site claim can be patented in
21 the same manner as an unpatented mining claim can,
22 right?

23 A. A similar procedure, a different set of
24 boxes that would have to be checked before a patent
25 can issue.

1 Q. That is a very fair answer.

2 What I meant was, an unpatented mill site
3 claim can be patented and converted to prior -- to
4 private ownership?

5 A. Yes.

6 Q. Right.

7 Just as an unpatented mining claim can be
8 patented and converted to private ownership?

9 A. Yes.

10 Q. Now, the January 1969 meeting, in your
11 testimony you characterized this as, "Nothing more
12 than a preliminary conversation about an idea
13 Molycorp then chose not to pursue."

14 And you also call it, "a verbal exchange
15 of preliminary ideas."

16 That is your testimony?

17 A. That is all we have a record of, is the
18 verbal exchange, yes.

19 Q. Okay. That is what there is a record of?

20 A. Yes.

21 Q. Okay. Now, you don't actually know,
22 sitting here today, how detailed Molycorp's
23 presentation actually was, right?

24 A. No.

25 Q. You don't know whether Molycorp used any

1 documents in making its presentation?

2 A. No.

3 Q. You don't know what documents were
4 prepared or in what level of detail, right?

5 A. That's correct.

6 Q. Okay. You don't know how long the parties
7 discussed the idea, right?

8 A. Right.

9 Q. You don't know how long the meeting
10 lasted?

11 A. Correct.

12 Q. And you don't know how vigorous the debate
13 was?

14 A. Correct.

15 Q. That is what we don't know --

16 A. We don't even know if there was a debate.

17 Q. Well, I think the meeting notes suggested
18 that there was some debate, but let's move on.

19 Let's review what we do know.

20 We do know that Molycorp, at least, made a
21 proposal to the Forest Service that it would locate
22 mill site claims, that came down the Red River
23 Valley and extended across the road in the bottom of
24 the valley, right?

25 A. Across the road and across the river to

1 the south side of the river.

2 Q. To the other side?

3 A. Yes.

4 Q. Okay. And we know that Molycorp proposed
5 to use those lands for waste-rock disposal?

6 A. Yes.

7 Q. And we know that Molycorp proposed to
8 protect the road and the river using culverts or
9 tunnels, right?

10 A. We know that from other documents, not
11 from those handwritten notes.

12 Q. We know that from the Forest Service's
13 written account of the meeting prepared later,
14 right?

15 A. Yes.

16 Q. And we know that Molycorp proposed to
17 construct across these culverts using -- using waste
18 rock, a bridge that would provide access to the
19 other side of the valley, right?

20 A. Yes.

21 Q. And we know that the area under potential
22 consideration ran roughly from the location of the
23 mill site down to Columbine Canyon, right?

24 A. Yes.

25 Q. And as Dr. Rigby testified yesterday,

1 maybe it is the whole space, maybe it is less, just
2 depending on what the ultimate plan was?

3 A. Yes.

4 Q. We know that Mr. Torgerson was Molycorp's
5 chief engineer, right?

6 A. Yes.

7 Q. And we know that Mr. Torgerson would have
8 been responsible for overseeing the locating of the
9 mill site claims and the design and engineering of
10 the rock pile, right?

11 A. Yes. You know, engineers like him, at
12 different times, I am not sure who would have been
13 in charge, but he was up there, yes.

14 Q. I can pull up your deposition testimony,
15 if you would like. It is what we agreed at your
16 deposition.

17 A. Yes.

18 Q. Okay. And we know from Mr. Dewey's
19 testimony that Mr. Torgerson prepared some drawings
20 or schematics, they unfortunately haven't survived
21 to this day, right?

22 A. I heard that testimony.

23 Q. Okay. But, we did see yesterday, in fact,
24 the Government used a map of the potential mill site
25 claims, right?

1 A. Yes. They had -- but those were mill site
2 claims only on the north side of the river. So they
3 didn't address the idea of filling the Red River
4 Canyon with waste rock. They were only for
5 acquiring the land where the current -- basically
6 where the current waste dumps sit.

7 Q. We can pull it up, if you would like.

8 Those claims do extend across the road to
9 the bottom of the valley, right?

10 A. To the bottom but not across.

11 Q. We will get there. We will get to it in a
12 minute, I assure you.

13 You're not in a position to contradict
14 Mr. Dewey's recollections, are you?

15 A. I wasn't there.

16 MR. TODD: And well, let's pull up that
17 map, please, now. It is CX216.

18 And let's go to the map, which I think is
19 the third page.

20 And, Patty, can you blow up maybe that
21 area right there?

22 Q (By Mr. Todd) Dr. Quivik, do you see the
23 southern extent of the mill site claims?

24 A. I do.

25 Q. Do you see the R38?

1 A. Yes.

2 Q. The mill site claims extend slightly past
3 the R38, right?

4 A. Yes.

5 Q. The river is right next to the road,
6 right?

7 A. Yes.

8 Q. I think they are not both shown clearly
9 here.

10 MR. TODD: We can put that down, thanks.

11 A. Wait. May I talk about it some?

12 Q **(By Mr. Todd) Sure.**

13 A. This is a sketch map, a sketch drawing to
14 suggest a concept, an idea, and the amount of land
15 that is south of the highway is very small and could
16 accommodate a very small amount of waste rock had
17 they planned to dump it right there.

18 And so that drawing could as easily
19 reflect what it does so that the southeastern
20 border, I will call it, is -- doesn't cover up the
21 road so that everyone can see the road.

22 Q. Your speculation, looking at this, is that
23 they drew the mill site claims past the road just so
24 we can see the road?

25 A. Yes, so we can see where the road is and

1 not to obfuscate the road.

2 Q. This area of the land to the south of the
3 road and the river that I have drawn, Forest Service
4 land, right?

5 A. Yes.

6 Q. Not withdrawn from the mineral entry,
7 right?

8 A. No. In fact, there were mining claims
9 staked there.

10 Q. And Molycorp could have located mill site
11 claims, too, right?

12 A. Could have, yes.

13 Q. Now, we know back to the meeting we do
14 know that at the meeting Mr. Taylor said he would
15 not agree to locating a mill site claim that crossed
16 the road and the river, right?

17 A. He said he would oppose the idea.

18 Q. Okay.

19 MR. TODD: Can we bring back up 210?

20 Q (By Mr. Todd) Handwritten notes, and I'm
21 going to read the second sentence here.

22 His handwriting is better than mine.

23 "Mr. Taylor advised that they would" --

24 A. Excuse me. This would not agree it is
25 another one that says would oppose, so --

1 Q. Well -- and specifically what he is not
2 agreeing is that -- to the proposed mill site claims
3 extending across the road, right?

4 A. Right.

5 Q. The proposal was to have them go across
6 the road, according to these notes, right?

7 A. Yes.

8 Q. And instead, as the notes reflect,
9 Mr. Taylor suggested the land exchange?

10 A. Yes.

11 Q. Now, in your testimony, you assert that
12 after -- you testified, that after this meeting
13 Molycorp chose to move on with the land exchange and
14 not to pursue the valley fill plan, right?

15 A. Yes.

16 MR. TODD: Let's pull back up CX212,
17 please, which is Mr. Watson's letter to the Forest
18 Service following up on the meeting.

19 And in this letter -- let's highlight
20 Paragraph 2, please. I'm sorry, Page 2,
21 Paragraph 2.

22 Q (By Mr. Todd) Mr. Watson said, following
23 the meeting after the Forest Service has declared
24 its opposition to this plan, he write, "Should it be
25 determined that all or a portion of the claims are

1 nonmineral, then it is, of course, our contention
2 that mill sites could be located upon it and that
3 the use of the area for dumps is a legitimate mill
4 site use."

5 Do you see that?

6 A. Yes.

7 Q. So as of this letter, at least, Mr. Watson
8 was still holding out hope for the valley fill plan,
9 right?

10 A. No, he was suggesting that if the land
11 exchange that -- this letter is basically saying, we
12 will start negotiating a land exchange but it is our
13 position that if the land exchange doesn't go
14 through, we still believe that we can acquire title
15 to the land using mill site claims.

16 There is no mention here of filling the
17 Red River Canyon with waste rock.

18 Q. Well, what the first sentence says,
19 Dr. Quivik, "Should it be determined that all or a
20 portion of the claims are nonmineral."

21 Do you see that?

22 A. Yes.

23 Q. Doing an examination of the land was a
24 requirement for the land exchange, right? And to
25 exchange, the lands had to be nonmineral, right?

1 A. That is my understanding.

2 Q. So the precondition here, that would be
3 something that would allow the land to go through,
4 right?

5 A. It would have confirmed the condition of
6 the land exchange, but the lands were nonmineral.

7 Q. He then states, "Molycorp's position that
8 they could use mill sites to establish these dumps,"
9 and you have already agreed several times that
10 Molycorp did have that right, under the law, right?

11 A. Yes.

12 Q. This letter, you would agree with me,
13 suggests that at this time the Forest Service was
14 articulating a different view. That, in fact, they
15 could not use mill sites, quote/unquote, for waste
16 rock, right?

17 A. I have seen that correspondence, that some
18 people in the Forest Service were questioning
19 whether waste dumps was the proper use of mill
20 sites.

21 Q. Okay. Let's go --

22 MR. TODD: Can you get rid of that,
23 please.

24 Let's blow up the next paragraph, please.

25 Q (By Mr. Todd) This is the next paragraph of

1 the same letter.

2 And Mr. Watson writes, "As you know from
3 our conference" -- and I think that is a reference
4 to the January meeting, would you agree?

5 A. I agree.

6 Q. "As you know from our conference, Molycorp
7 originally contemplated locating mill sites in most
8 of this area. Perhaps Mr. Parde hasn't been able to
9 verify that mill sites can be acquired for dumping
10 of waste materials."

11 Do you see that?

12 A. Yes.

13 Q. Does that suggest that Mr. Parde was
14 raising a question whether Molycorp could dispose of
15 waste rock on mill sites?

16 A. Yes.

17 Q. And Mr. Watson wants to know whether
18 Mr. Parde has come up with anything to support that
19 legal interpretation, right?

20 A. Right.

21 MR. TODD: Let's pull up CX216, which is
22 Assistant Regional Forester John Kone.

23 Q (By Mr. Todd) He responds -- you are
24 familiar with this letter, right?

25 A. Yes.

1 Q. April 18, 1969.

2 MR. TODD: Let's call up the last
3 paragraph, place. The bottom two lines.

4 Q (By Mr. Todd) And so the Assistant Regional
5 Forester responds to Mr. Watson's inquiry and
6 writes, "With regard to the propriety of mill site
7 locations, our attorney has not yet been able to
8 determine whether mill site claims can properly --

9 MR. TODD: The next page, please.

10 Q (By Mr. Todd) -- been used for mine waste,
11 dumps."

12 Do you see that?

13 A. Yes.

14 Q. He also raises a question, which was
15 discussed yesterday, about the shape of the mill
16 site claims?

17 A. Yes.

18 Q. Okay. And you saw that fan on the side of
19 the hill?

20 A. Yes.

21 Q. Mr. Fredley testified yesterday that
22 Federal law -- the Federal law that establishes mill
23 site claims dictates an acreage but not a shape.

24 You don't have any reason to disagree with
25 that, do you?

1 A. No.

2 Q. In the last paragraph of this letter --

3 MR. TODD: Let's highlight that, please,
4 and call it out, I should say.

5 Q (By Mr. Todd) Assistant Regional

6 Forester Koen writes, "We recognize that sufficient
7 land adjacent to the mine for waste dumps must be
8 made available to Molycorp really by some means."

9 Do you see that?

10 A. Yes.

11 Q. Okay. So to the Forest Service views,
12 this as something they have to do?

13 A. Yes.

14 Q. It continues, "However, since there is an
15 area of about 2400 acres of National Forest land
16 involved, we believe it necessary to initiate a
17 friendly validity contest to determine if mill site
18 claims or mining claims can be located solely for
19 the purpose of mine waste disposal if Molycorp
20 intends to hold the land under the Mining Laws."

21 Did I read that correctly?

22 A. Yes.

23 Q. The reference to hold the land under the
24 Mining Laws, that means by mill sites, right?

25 A. Yes. He names mining claims and mill

1 sites but it's the mill site idea.

2 Q. And the question that would be put to
3 issue in this, "friendly validity contest," is to
4 determine if mill site claims can be located solely
5 for the purpose of mine waste disposal.

6 Do you see that?

7 A. Yes.

8 Q. And you would agree that what the
9 Assistant Regional Forester is saying here is that
10 if Molycorp wants to proceed with its mill site
11 approach instead of the land exchange, then the
12 Forest Service would initiate a validity contest to
13 test whether that was appropriate?

14 A. Yes.

15 Q. Now, Mr. Watson wrote back to Mr. Koen a
16 few days later.

17 MR. TODD: Let's pull up CX217.

18 Actually, we can take that down.

19 Q. (By Mr. Todd) Now, as you agreed with me
20 the first thing this morning, you are not familiar
21 with how validity contests are conducted, right?

22 A. Not in great detail. I have a broad
23 understanding but not in great detail.

24 Q. And Mr. Fredley has testified that a
25 validity contest could last from five to up to even

1 **ten years.**

2 **Do you recall that?**

3 A. Yes.

4 **Q. You are not offering any opinion**
5 **contradicting Mr. Fredley's testimony regarding**
6 **validity contests, are you?**

7 A. No. The only thing to point out is that
8 they had been operating with each other in good
9 faith and he uses the word friendly validity claim.
10 And so it could have been that he was suggesting,
11 let's just test this one question and not contest
12 it, but test it.

13 **Q. That's what he could have been suggesting?**

14 A. Could have been, yeah. We don't know but
15 that is why he does say, "a friendly one."

16 **Q. He does use the word friendly?**

17 A. Yes.

18 **Q. But just to confirm, you're not in a**
19 **position to contradict Mr. Fredley's testimony**
20 **regarding the validity contest, are you?**

21 A. In general if two parties are contesting
22 each other, I am not in a position to contradict his
23 testimony.

24 **Q. Thank you.**

25 **Now in your testimony you state that**

1 Molycorp decided to apply to obtain title to the
2 land through a land exchange with the Forest Service
3 because that was cheaper and easier?

4 A. Yes.

5 Q. And in assessing the costs, Molycorp would
6 have included financial costs such as surveyors and
7 lawyers, right?

8 A. Yes.

9 Q. The cost of locating the claims?

10 A. Yes.

11 Q. And costs would also have included loss of
12 time or disruptions to operations, right?

13 A. Well, I am not sure about disruptions of
14 operations because the operations were not disrupted
15 while they were waiting for the land exchange to go
16 through. They knew they could continue operating as
17 they were and one way or another this acquisition of
18 title would happen whether it is through mill site
19 claims or the land exchange.

20 Q. My question goes specifically to Molycorp
21 weighing whether or not to risk a validity contest.

22 A. But you are assuming that it would be
23 contested not friendly, right?

24 Q. Well, either way.

25 A. Yeah.

1 Q. Either way. If Mr. Fredley is correct as
2 Molycorp would have known, a validity contest could
3 last a long time?

4 A. Yeah. A land exchange could last a long
5 time, right.

6 Q. It ended up lasting four years, right?

7 A. Yeah.

8 Q. November of '69 to January of '74?

9 A. Right, four years. And Molycorp's
10 operations were not interrupted during that period.

11 Q. They weren't because Molycorp didn't risk
12 the validity contest, right?

13 A. No, no, I mean their mining operations
14 weren't interrupted even though it took four years.

15 Q. I appreciate that.

16 In the land exchange process they were not
17 interrupted?

18 A. Right. A friendly validity contest might
19 have been completed in a shorter period of time.

20 Q. And an unfriendly validity contest might
21 have taken up to ten years?

22 A. No one is talking to an unfriendly
23 validity contest.

24 Q. Have you ever heard someone use the term
25 friendly when they actually meant hostile?

1 A. We are talking about people who work
2 together and want to cooperate, the Forest Service
3 and Molycorp, so this seems collegial to me.

4 **Q. That is your opinion?**

5 A. Yes.

6 **Q. Okay. Do you recall your deposition?**

7 A. Excuse me?

8 **Q. Do you recall your deposition?**

9 A. Oh, yes.

10 MR. TODD: Let's pull up Page 603, Line 3
11 through 11.

12 **Q. (By Mr. Todd) Sir, were you asked the**
13 **following question and did you give the following**
14 **answers, I will start on Line 4.**

15 **"Would the cost of a validity contest to**
16 **Molycorp merely be financial or might Molycorp also**
17 **measure it in terms of time?"**

18 ANSWER: "Absolutely, those would be
19 costs."

20 QUESTION: "What would the time -- how
21 will the time be a cost? What would be the
22 relevance of time?"

23 ANSWER: "That could delay the mining
24 operation," and you represented to me how long they
25 would last.

1 That was your sworn testimony, right?

2 A. Yes. We were talking about whether this
3 would actually be a friendly validity contest.

4 I remember that you commented in the
5 deposition that that could be a sarcastic remark,
6 but we didn't have an opportunity to delve into it
7 in this kind of depth at my deposition.

8 **Q. You're not disputing Mr. Fredley's**
9 **testimony that a validity contest could last five to**
10 **ten years?**

11 MR. HARRISON: Objection, asked and
12 answered.

13 MR. TODD: It hasn't been answered very
14 clearly, Your Honor. I'm not asking about this
15 case, I just want a straight answer as a general
16 matter whether a validity contest could last five to
17 ten years.

18 **Q. (By Mr. Todd) Mr. Fredley so testified,**
19 **you are not contradicting him, right?**

20 A. I am not contradicting him.

21 **Q. Thank you.**

22 Now, as you have noted several times in
23 your testimony and here this morning, Molycorp did,
24 in fact, have a right under the Mining Laws to
25 locate mill site claims and place waste rock on

1 **them, right?**

2 A. Yes.

3 **Q. And that is different than what Mr. Koen**
4 **told Mr. Watson and what the Forest Service told**
5 **Molycorp in early 1969, right?**

6 A. Yes. I can't explain why he would have
7 said that because I have seen earlier comments by
8 Forest Service people expressing that understanding
9 and as the land exchange was getting underway, again
10 Forest Service people were expressing their
11 understanding that Molycorp could get this land
12 through mill site claims. So I can't explain why he
13 would have made that statement in 1969.

14 **Q. Thank you, sir.**

15 MR. TODD: Let's pull up CX281, which is
16 the environmental assessment.

17 **Q. (By Mr. Todd) In the 1972 environmental**
18 **assessment, the Forest Service discussed**
19 **alternatives to the exchange, right?**

20 A. Yes.

21 MR. TODD: And let's go to Page 7 of the
22 PDF.

23 There we go. Thank you, Patty.

24 **Q. (By Mr. Todd) One alternative listed on**
25 **the second, which is the second paragraph here,**

1 would have been to prohibit the dumping of waste on
2 Forest Service land entirely.

3 Do you see that?

4 A. Yes.

5 Q. And the U.S. rejected that for the reason
6 you have already identified, which is Molycorp could
7 have used mill site claims to grab the land and
8 place waste rock, right?

9 A. Yes.

10 Q. The Government wrote, "The mining company
11 has every right to use mill sites for those disposal
12 areas," right?

13 A. Yes.

14 Q. And that is consistent with your
15 understanding?

16 A. Yes.

17 Q. The environmental assessment here also
18 describes Molycorp's valley fill proposal in some
19 detail, and you referenced this earlier.

20 MR. TODD: So let's highlight the first
21 paragraph, please.

22 Q. (By Mr. Todd) And so this is Forest
23 Service's description of what Molycorp had proposed
24 in January of 1969. And it reads: "One of the
25 company's proposals is to dump the waste into the

1 Red River Canyon from a point just below the mine to
2 the mouth of Columbine Canyon. This plan would
3 require a tunnel for rerouting State Route 38 and a
4 diversion of the Red River. This is the least
5 expensive means of disposing of the overburden, but
6 the impact on the environment and ecology of the Red
7 River Canyon would be tremendous. The proposal has
8 been vigorously opposed by the Forest Service and
9 ecologists groups. Because of this opposition, the
10 Company has made other proposals."

11 Do you see that?

12 A. Yes.

13 Q. Now this assessment acknowledges that the
14 Forest Service had vigorously opposed the proposal
15 when it was made, right?

16 A. Yes.

17 Q. And that was back in '69.

18 The Forest Service also asserts here that
19 the plan was opposed by ecology groups.

20 Do you see that?

21 A. Yes.

22 Q. Now the Forest Service in its sworn
23 testimony has been unable to identify ecology,
24 ecologists or environmental groups that this
25 referred to. You are not aware of who this refers

1 to either, right?

2 A. No.

3 Q. Lastly the Forest Service asserts that the
4 impact on the environment and ecology would be
5 tremendous.

6 Do you see that?

7 A. Yes.

8 Q. Now, you know, you agree, that the Forest
9 Service -- let me back up.

10 The Forest Service has acknowledged in its
11 sworn testimony that it never undertook any
12 environmental analysis of Molycorp's proposal.

13 Do you have any reason to dispute that
14 testimony?

15 A. No, especially because they had nothing on
16 which to base an analysis.

17 Q. And you're not aware of any such analysis?

18 A. Right, correct.

19 Q. And nor have you seen any Forest Service
20 or other Federal agency document that analyzed the
21 relative ease or relative cost or ease of
22 remediation of either the valley fill concept or
23 placing waste rock on just the north slope of the
24 Red River Valley, right?

25 A. No, Molycorp to our knowledge did not

1 provide any of those kinds of detailed plans. Did
2 not submit a proposal and so the Forest Service
3 could not have done that kind of analysis.

4 Q. Okay. And that takes care of the valley
5 fill plan, no analysis of that. By question had two
6 components. You also have seen no study by the
7 Forest Service of the cost of remediability of
8 placing rock on just the north slopes of the Red
9 River Valley instead of across the valley, right, no
10 comparative analysis?

11 A. No, that wasn't an issue in this.

12 Q. And as the environmental assessment here
13 documents in the last sentence, we have noted the
14 vigorous opposition by the Forest Service here and
15 these unidentified ecology groups, right?

16 A. Yes.

17 Q. And as the Forest Service writes here in
18 the last sentence, "Because of this option, the
19 Company has made the other proposals," right?

20 MR. TODD: Your Honor, no further
21 questions.

22 THE COURT: Thank you. Can you redirect
23 in six minutes?

24 MR. HARRISON: No, Your Honor.

25 THE COURT: I think we will take our noon

1 recess until 1:30. We'll be in recess.

2 (A recess was taken.)

3 THE COURT: Good afternoon. You may be
4 seated. You may redirect if you must.

5 MR. HARRISON: Thank you, Your Honor.

6 THE COURT: You are still under oath.

7 THE WITNESS: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. HARRISON:

10 Q. Dr. Quivik, do you remember the questions
11 about your experience and qualifications as an
12 industrial historian?

13 A. Yes.

14 Q. And you acknowledge you're testifying here
15 as an industrial mining historian?

16 A. Yes.

17 Q. Can you explain the importance and role of
18 an industrial historian in a case like this?

19 A. A case like this took place across, or the
20 facts that are being litigated in this case, a case
21 like this took place across many decades.

22 And it is important to have an historian
23 look at the evidence, look at the historical facts
24 and be able to put together a meaningful explanation
25 of how those facts unfolded, how, the basis on which

1 based on documentary evidence, various participants
2 in that history did what they did and especially in
3 cases like cases involving mining companies, to have
4 an historian who is knowledgeable about mining
5 engineering, about metallurgical engineering, about
6 the other facets of the environments that mining
7 companies operate in to be able to help explain that
8 history as it unfolded.

9 One other thing that is important is that
10 we all, as human beings, have a tendency to project
11 what we know on to people in the past, and it is
12 important for an historian to look at what those
13 actors were doing, knowing what they knew then and
14 not to project what we know now onto those past
15 actions.

16 **Q. Dr. Quivik, could you explain the**
17 **historical importance throughout the 20th Century of**
18 **the Lindley treatise that was talked about during**
19 **your cross-examination as it relates to the Federal**
20 **Government and also to mining companies?**

21 **A. Yes. The Lindley treatise was a treatise**
22 **describing the legalities of the Mining Law for**
23 **people who are acting in the United States in the**
24 **mining industry, both with regard to miners, mining**
25 **companies on the one hand and people including**

1 Government officials on another hand who might want
2 to know what are mining companies allowed to do
3 under the Mining Act.

4 **Q. And in your experience as an historian, is**
5 **it your opinion that the Lindley treatise was relied**
6 **on by mining companies and the United States?**

7 MR. TODD: Objection, leading.

8 THE COURT: Overruled.

9 A. Yes. One of the examples I cite is a
10 Mining Engineers Handbook by a person named Robert
11 Peel, and it is one of the prominent texts in the
12 field with sections on lots of different facets of
13 mining, including engineering but also water rights
14 and finance and management.

15 And there is one section on the law and he
16 cites extensively from Lindley describing Lindley as
17 the main treatise so that miners can understand what
18 the level infrastructure is within which they are
19 operating with regard to mining claims and other
20 matters.

21 **Q. Historically speaking how did the Mining**
22 **Laws permit private parties to have the exclusive**
23 **right to possess and mine Federal lands?**

24 A. Well, normally one would think if someone
25 owns a piece of land one would have to get

1 permission from the owner of that land to go onto
2 the land and start exploring for minerals.

3 And the Mining Act gave miners the right
4 of entry on the land so they didn't have to notify
5 the Government if they were entering the public
6 domain to explore for minerals. And it gave miners
7 the right to occupancy. So once they staked a
8 claim, located a claim, filed it in a local office,
9 clerk and recorders office in the county, they could
10 occupy it, meaning start digging, start building
11 improvements, all of those kinds of things and they
12 could do those things without having to notify the
13 Federal Government that they were doing those
14 things.

15 The only time necessarily that the
16 Government would learn that they had entered public
17 land had occupied public land is if the miner
18 discovered a mineral and wanted to move that
19 unpatented minor claim to a patent.

20 **Q. And so was patenting required to mine or**
21 **use the claims for mining purposes?**

22 A. No. A miner could enter the land, occupy
23 the land and then if the miner found exploitable
24 minerals, could start mining, generating revenue,
25 all of which the miner could do without notifying

1 the Government and without owing the Government
2 anything.

3 Q. As a practical matter, you heard and were
4 asked questions about Mr. Lindley's term, the
5 paramount proprietor, or the paramount owner. That
6 term is certainly used in Mr. Lindley's treatise,
7 but as a practical matter could you discuss how
8 Chevron or how a mining company would act on a
9 property with respect to the possession of that
10 property vis-a-vis the United States?

11 MR. TODD: Objection, Your Honor. I guess
12 ambiguous and overbroad. The witness is being asked
13 to describe how Chevron or every other mining
14 company would act on some unidentified property.

15 THE COURT: Sustained.

16 Q (By Mr. Harrison) In your experience as a
17 mining historian and in your review of the documents
18 in this case, could you describe for the Court the
19 efforts that Chevron, briefly describe the effort
20 that Chevron did at the Questa site to suggest it
21 had exclusive possession of the property?

22 THE COURT: I don't understand the
23 question.

24 Q (By Mr. Harrison) I will rephrase.

25 What did Chevron do once it had staked

1 **mining and mill site claims on at the Questa site to**
2 **suggest that it had authority over that land?**

3 MR. TODD: Objection, ambiguous.

4 THE COURT: I'm sorry?

5 MR. TODD: I just objected again,
6 Your Honor. I think the question is still ambiguous
7 and overbroad.

8 THE COURT: Yes.

9 **Q (By Mr. Harrison) I will move on, then.**

10 **Dr. Quivik, as a mining historian are you**
11 **familiar with how mining companies respond to**
12 **possible changes in the Mining Laws and regulations?**

13 A. I have seen those responses unfold
14 historically, yes.

15 **Q. You were asked about the Northern**
16 **New Mexico economic policy.**

17 Do you recall being asked about that?

18 A. Yes.

19 **Q. In your review of the historical documents**
20 **in this case, is there anything to suggest to you**
21 **that the Government would have acted any differently**
22 **had that policy not been in place?**

23 A. No.

24 **Q. You were also asked about the exploration**
25 **of the Questa Mine in the 1950s. In your review of**

1 the historical documents in this case, was it
2 apparent to Chevron in the 1950s that there was the
3 potential of low-grade ore at the Questa site?

4 A. They were aware that there was molybdenum
5 all over the place and they were also aware from
6 reports like Schilling's report and their own
7 geologists' report, Carpenter's report that there
8 was low-grade material in the area.

9 Q. And so because you know the potential of
10 an ore body and in this case a low-grade ore body,
11 are the methods for extracting that ore obvious and
12 well-known?

13 A. Yes.

14 Q. And in this case what were those methods?

15 A. Well, as we have heard throughout the
16 trial, in the first phase of mining at the Questa
17 Mine, Molycorp was using selective underground
18 mining, driving drifts and crosscuts and opening
19 slopes and extracting ore and that was extracting
20 high-grade ore that it could do at a profit.

21 With the low-grade material there would
22 have been two options available to Molycorp that
23 would have, it would have known about in the mining
24 industry, one is block cave mining and we have heard
25 that described and the other is open pit mining and

1 we have heard that described.

2 Q. Was diamond drilling prevalent in the
3 mining industry in the 1950s?

4 A. Yes.

5 Q. In your review of the documents in this
6 case, what is your opinion about the availability of
7 funds that Chevron had in the 1950s prior to the
8 DMEA loan?

9 A. Well, I have seen the documents that show
10 that Molycorp raised funds through sales of stock
11 and through bank loans.

12 Q. You were also asked questions about DMEA
13 generally, and do you recall those questions?

14 A. Yes.

15 Q. What is your understanding of DMEA's
16 programs support for molybdenum exploration as
17 compared to the DMEA program support for other
18 minerals exploration?

19 A. There were three categories of metals for
20 which the DMEA would make loans for exploration.
21 Two of those metals, uranium and cobalt, were of
22 such a status that the DMEA would make a loan of
23 90 percent of the exploration costs to the mining
24 company.

25 There were a couple of other metals

1 tungsten and manganese for which DMEA would make a
2 loan of 75 percent of the cost and then, as we have
3 heard throughout this testimony, DMEA would make
4 loans of 50 percent for molybdenum and that is in
5 the same category as lead, zinc, copper and other
6 metals.

7 Q. Are you aware of any other mines at the
8 time that used DMEA funding?

9 A. Yes.

10 Q. Are you aware of any mines at the time
11 that did not use DMEA funding?

12 A. Yes.

13 Q. And did any of those mines include
14 uranium?

15 A. Yes.

16 Q. Could you briefly explain that for the
17 Court?

18 A. Yes. I testified, Your Honor, in U.S. v.
19 Newmont, which is the midnight Superfund midnight
20 mine, Superfund case in the state of Washington.
21 And that was a uranium mine, and it was discovered
22 and explored during the 1950s, during this DMEA
23 period and the developers chose to explore and
24 develop that mine without DMEA assistance.

25 Q. You were also asked about the control that

1 the DMEA had over Chevron during the DMEA contract.

2 Do you recall being asked about that?

3 A. Yes.

4 Q. In terms of control, what is your opinion
5 as to DMEA's control over Chevron?

6 A. Well, the agency was able to use its
7 influence during the negotiation period to negotiate
8 a contract with Molycorp that addressed some of the
9 exploration objectives that DMEA thought would be
10 more reasonable than what Molycorp wanted to do and
11 also to convince Molycorp to use exploration methods
12 that the DMEA thought would be more effective at
13 this particular site.

14 And during that whole negotiation process,
15 Molycorp was free to walk away from the
16 negotiations, refuse to compromise and not get a
17 loan, but Molycorp decided to compromise and enter
18 that contract.

19 Q. And after entering into the DMEA contract
20 did Chevron do exploration work on its own?

21 A. Yes.

22 Q. And any work that was deemed to be not
23 covered by DMEA, could Chevron do that exploration
24 work on its own as well?

25 A. Yes, and it did. It conducted, it drove

1 about as much in terms of drifts and crosscuts on
2 its own account with its own funds as it did under
3 the DMEA program. And it did not need permission
4 from the Government or from the agency, to do that
5 additional exploration work on its own.

6 **Q. When did the Government determine that**
7 **molybdenum was no longer a defense necessity?**

8 A. About two months after the contract was
9 signed.

10 **Q. On cross-examination you were shown**
11 **Chevron's DMEA application and also was called out**
12 **to the statement that, "no known reserves and no**
13 **other exploration work was planned."**

14 **Do you recall seeing that?**

15 A. Yes.

16 **Q. In your review of the historical documents**
17 **in this case, do you believe that that is entirely**
18 **correct?**

19 A. Well, the reserves were that the
20 high-grade reserves were exhausted and that may have
21 been true that at that particular moment Molycorp
22 had no other exploration program in mind.

23 **Q. But was Molycorp also aware of the**
24 **presence of low-grade ore at the time of its DMEA**
25 **application?**

1 A. I am sure it was.

2 **Q. What did the DMEA final report --**

3 A. I guess I should say it was aware of the
4 low-grade material. No one knew yet whether it
5 would qualify as ore.

6 **Q. In the final report that DMEA issued, do**
7 **you recall what DMEA concluded regarding the ore**
8 **reserve that was located?**

9 A. In general, yes.

10 **Q. And what is that?**

11 A. That it documented the three blocks of
12 probable ore and also documented a much larger
13 volume of low-grade material that was in the general
14 area of the Questa Mine about which little was known
15 as of yet.

16 **Q. And what happened next?**

17 A. Molycorp raised some more financing and
18 began an exploration, some more exploration from
19 that same level, the 7800-foot level.

20 In the beginning most of its exploration
21 was towards the Southwest and in what was called the
22 Southwest zone, and then in a year or two it began
23 to devote some attention to exploration in the
24 Northeast zone as well.

25 And would you like me to elaborate or just

1 in general?

2 THE COURT: Just answer the question.

3 THE WITNESS: Yeah, I am just wondering
4 how much detail I should get into.

5 Q (By Mr. Harrison) That is good for now,
6 thank you.

7 A. Okay.

8 Q. You mentioned the 7800 level. Was the
9 DMEA-funded drilling at a different elevation and in
10 a different block of ground as the open pit mine
11 that was ultimately developed?

12 MR. TODD: Objection, Your Honor, that
13 exceeds the scope of cross. Dr. Quivik has a
14 lengthy dissertation in his direct testimony on the
15 relative location between the DME discover and the
16 open pit. As you recall we discussed it with
17 Dr. Rigby yesterday. I asked no questions at all
18 about that testimony, so this is beyond the scope of
19 cross.

20 THE COURT: Sustained.

21 Q (By Mr. Harrison) In your opinion as a
22 mining historian, could Chevron have entered into a
23 joint venture or other arrangement in an effort to
24 develop a low-grade ore body?

25 THE COURT: Counsel, how can an historian

1 say what Chevron might have done under a different
2 set of circumstances?

3 MR. HARRISON: Understood.

4 Q. (By Mr. Harrison) Dr. Quivik, are you
5 aware of joint ventures that occurred between mining
6 companies in the mid-20th Century?

7 A. Yes. Including between Molycorp and
8 Kennecott.

9 Q. Could you just briefly describe that,
10 please?

11 A. At the time that the -- in the mid-'50s
12 and at the time that the DMEA exploration program
13 was underway, Molycorp had a joint venture going
14 with Kennecott for a mine in Québec.

15 And in other mining districts I have
16 researched in the course of doing work on Superfund
17 litigation, I have encountered a number of those
18 kinds of instances when, or in which the owner of a
19 set of mining claims entered into a joint venture
20 with another usually larger mining company to have
21 the larger mining company finance or help finance
22 the exploration and oftentimes actually do the work,
23 at least lend expertise and that sort of thing.

24 Q. As part of your testimony in this case did
25 you develop an opinion as to the location of the ore

1 **bodies that were identified through DMEA?**

2 A. Yes.

3 **Q. Did you come across any -- in developing**
4 **that, did you come across any documents to support**
5 **that position?**

6 A. Yes.

7 **Q. What were some of those documents?**

8 A. Well, Molycorp's final report, 1960. And
9 then there were other documents that referenced that
10 report, the OME's final report. Well, the
11 certification is based on those reports. I don't
12 recall that the certification necessarily specifies
13 three blocks of material.

14 And then they were subsequently
15 referenced, for instance, when Molycorp filed the
16 patents and mining claims, and there was reference
17 to those blocks beneath some of the mining claims
18 Molycorp patented.

19 **Q. In your review of the documents in this**
20 **case, when was the extent of the ore body final and**
21 **fully understood?**

22 A. Well, the most recent information I have
23 seen is a 2009 USGS document. A document that
24 Dr. Rigby uses twice in his direct testimony for
25 illustrating the Questa area.

1 MR. HARRISON: Can we show CX363, please.

2 If we could turn --

3 Q. (By Mr. Harrison) Is this the document
4 you are referring to?

5 A. Yes.

6 MR. HARRISON: If we could turn to Page 5?

7 MR. TODD: Your Honor, I will interpose an
8 objection again on exceeding the scope of cross, if
9 I am correct as to where Mr. Harrison is going with
10 this.

11 THE COURT: I will overrule it at this
12 time.

13 MR. HARRISON: If we could zoom in on the
14 area, there.

15 Q. (By Mr. Harrison) Could you please
16 explain what this map shows with respect to the ore
17 bodies at the Questa site?

18 A. Yes, this shows the -- Your Honor, you can
19 see a kind of brown horseshoe-shaped body there.
20 That is what is called the central ore body and in
21 case you are interested, the Northern part of that
22 was oftentimes called the Northeast zone and the
23 southern part oftentimes called -- excuse me, the
24 Northeast zone and then the Southwest zone.

25 And it wasn't until relatively or recently

1 from the literature that people understood that that
2 was one horseshoe-shaped ore body.

3 And then off to the northeast we can see
4 underneath the outline of the open pit another ore
5 body that is identified as the Sulphur Gulch ore
6 body. And just to the -- there is a little line
7 separating those two. I don't know if you can see
8 that, Your Honor. There is a little lobe of the
9 yellow material that is kind of right in the middle
10 of the horseshoe. And then just to the -- extending
11 downward and on this drawing and towards the right,
12 there is a line there. That is an outline, and it
13 is demonstrating that the Sulphur Gulch ore body is
14 a distinct ore body from the central ore body.

15 And then on this page in the text
16 describing this illustration there is some
17 additional information which Dr. Rigby did not share
18 with the Court, and that points out that the open
19 pit is mining the Sulphur Gulch ore body and then
20 the central ore body is one of the other ore bodies
21 in the area. It is at much greater depth, and that
22 would be an ore body that might have potential for
23 block cave mining. But it is a distinct ore body
24 from the ore body that was being mined by the open
25 pit.

1 MR. TODD: Your Honor, I renew my
2 objection and move to strike that entire answer.
3 That was entirely beyond the scope of cross. That
4 was intended to --

5 THE COURT: I will deny your motion to
6 strike, but I would suggest that you start a whole
7 new dialogue about stuff that was never discussed
8 before.

9 MR. HARRISON: Understood, Your Honor.
10 Your Honor, if I may on that point,
11 Dr. Rigby testified yesterday as to two new
12 demonstrative exhibits on the easel. And in the
13 normal course of a trial, Dr. Quivik would have been
14 provided the opportunity to testify as to those
15 during his direct examination.

16 THE COURT: Well, he could have here, too.

17 MR. HARRISON: We were not aware of the
18 drawings that were made on the easel yesterday at
19 trial, and so we were wondering, or with the Court's
20 indulgence, I would like to ask a few questions of
21 those two demonstrative exhibits that Dr. Rigby drew
22 yesterday in court that Dr. Quivik can testify to is
23 the first time he has seen images like that?

24 THE COURT: And as a, what, industrial
25 historian it is relevant?

1 MR. HARRISON: Dr. Quivik's rebuttal
2 report does address certain areas of Dr. Rigby's
3 report pertaining to the location and cites of
4 drilling that was done in the open pit area.

5 THE COURT: What significance is it?

6 MR. HARRISON: The significance is that it
7 goes to show the demonstrative goes to show that the
8 marks on there are not approximate and not accurate
9 as to where the actual drilling occurred and --

10 THE COURT: So what? I mean, I don't
11 think that that is an issue here. Nobody is saying
12 that they drilled in the wrong place or that the
13 lines are anything other than approximations. This
14 is a whole new area you are getting into.

15 MR. HARRISON: Understood, Your Honor. I
16 think the point is that the drilling did not
17 directly lead to the area of the open pit.

18 THE COURT: What significance is it?

19 MR. HARRISON: I will move on, Your Honor.
20 Thank you.

21 THE COURT: All right. Thank you.

22 Q (By Mr. Harrison) So, Dr. Quivik, after the
23 DMEA program ended in 1960, Chevron ultimately
24 decided to develop an open pit mine?

25 A. Yes.

1 Q. Could you explain, based on your review of
2 the historical documents in this case, the efforts
3 that went into Chevron's development of the open pit
4 mine, briefly, please?

5 A. Well, after about three more years of
6 exploration in an area much larger than had been
7 explored under the DMEA program, Molycorp began
8 exploring in an area that is now the open pit and
9 the indications that that held promise as an open
10 pit was the fact that there was a lot of molybdenum
11 in the soils on the surface there.

12 And that led Molycorp to identify that
13 area as a target distinct from the northwest, the
14 Northeast zone and the Southwest zone. And that
15 exploration ultimately led Molycorp to raise the
16 money to actually develop an open pit mine there and
17 that mine began operating in late '65 and full-scale
18 operation in '66.

19 Q. You were asked a lot of questions today
20 about mining claims and mill sites and unpatented
21 claims versus patenting of those claims, so I would
22 like to ask you some questions about those now, as
23 it relates to the open pit mine.

24 What is the significance of Chevron's
25 staking mining and mill site claims for the land

1 **around the open pit?**

2 THE COURT: I'm sorry, I don't understand
3 that question.

4 **Q (By Mr. Harrison) Did Chevron stake mining**
5 **and mill site claims around the open pit?**

6 A. Yes.

7 **Q. Why did it do that?**

8 A. Well, the mining claims that it staked
9 around what became the open pit it had already
10 staked.

11 There was a core group of mining claims
12 and then as Molycorp came to recognize that it
13 appeared that there is more and more area of
14 mineralized, potentially mineralized with
15 molybdenum, it staked mining claims on a pretty
16 large area that I think was something like 12 miles
17 long and several miles wide.

18 And the Questa Mine is roughly at the
19 middle of that area, and so the significance of
20 staking those claims is that Molycorp had a pretty
21 good idea that there was a lot more molybdenum in
22 the area and it wanted to make sure that it had the
23 rights to explore, develop and possibly mine those
24 potential mineral deposits and not a competitor.

25 We know from the history that at one point

1 Climax was in the area trying to stake mining claims
2 as well.

3 The significance of Molycorp staking mill
4 site claims is that Molycorp could only gain title
5 to a mining claim if they could demonstrate that
6 they had discovered a mineral, and then they could
7 apply for patent. If they needed other lands to
8 support their mining activities for milling, for
9 disposing of waste, for building support facilities,
10 any of the kinds of things that would have to occur
11 to support a mining activity, the Mining Law of 1872
12 gave them a right to stake mill site claims.

13 And they could locate them, again, without
14 notifying the Government that they were doing so,
15 without asking permission to do so and they could
16 start using them immediately. And in order to apply
17 for patent to those mill site claims, they had to
18 have occupied the mill site claim, meaning they had
19 to have some kind of improvement on the mill site
20 claim.

21 So they were using that as a method to
22 acquire land they needed if they didn't think that
23 they could acquire it through the mining claim
24 route.

25 **Q. And so one of the uses of the mill site**

1 **then is for waste disposal?**

2 A. Yes.

3 **Q. Did you review any documents pertaining to**
4 **waste-rock disposal and the capacity of that at the**
5 **Questa site?**

6 A. I am not sure what you mean by capacity.

7 **Q. Did you review any corporate documents**
8 **that analyzed the location of waste-rock piles and**
9 **plans for waste-rock dumping?**

10 A. Yes, both feasibility studies and other
11 planning documents.

12 MR. HARRISON: Could we show CX282.

13 **Q. (By Mr. Harrison) This is the 1972**
14 **feasibility study. Is this one of the documents**
15 **that you reviewed?**

16 A. Yes.

17 MR. HARRISON: If you could turn to
18 Pages 18 and 19.

19 **Q. (By Mr. Harrison) Dr. Quivik, what is**
20 **your opinion as to the -- at the bottom of Page 18,**
21 **the dumps available and future dumps sections?**

22 MR. TODD: Objection, exceeds the scope of
23 cross. Again, I asked no questions about the actual
24 mechanics of the valley fill plan.

25 THE COURT: That's correct.

1 Q (By Mr. Harrison) Dr. Quivik, do you see on
2 Page 19 -- strike that.

3 You were also asked about the tailings
4 pipeline areas and the special use permit.

5 Do you recall that testimony?

6 A. Yes.

7 Q. And you were asked whether it was a
8 discretionary act of the Forest Service to grant the
9 special use permit?

10 A. Yes.

11 Q. Did you hear Mr. Fredley's testimony
12 yesterday that the process that the Forest Service
13 went through was proper?

14 A. Yes.

15 Q. You were also asked about the BLM land
16 exchange and the appraisal report, which was CX259.

17 Do you recall being asked about that
18 today?

19 A. BLM land exchange?

20 Q. Excuse me, the public sale auction.

21 A. Yes, okay. Could you repeat the question,
22 please.

23 Q. Yes.

24 You were also asked about the appraisal
25 report from the BLM public land sale auction?

1 A. Yes.

2 Q. And do you recall in there you were shown
3 that it was the, quote, highest and best usage of
4 that area for the tailings impoundment area?

5 A. Yes.

6 Q. What is the purpose of an appraisal report
7 as part of this land, the public sale land auction?

8 A. Well, I think that there are a couple of
9 functions. One is to try to get a sense of what the
10 value might be. And another is to assess or
11 appraise its possible uses and to allow that
12 information to inform the Government of whether or
13 not this would be a sale that would be proper and in
14 the public interest as well as, of course, the
15 person who wants to purchase it.

16 Q. So the public uses that were identified in
17 the appraisal report, those aren't the required
18 usage, uses of the property, is it?

19 A. No.

20 Q. What could a mining company like Chevron
21 do on Federal lands once it located a mining or mill
22 site claim?

23 A. Anything as long as they are not violating
24 the law. And if it is in the Forest Service, then,
25 of course, they can't do commercial logging and

1 stuff like that.

2 Q. And what could the Federal Government do
3 once a mining company or individual had located
4 claims on Federal lands?

5 A. Well, in many instances the Federal
6 Government wouldn't even know about it until years
7 later if a patent was applied for.

8 And if the Federal Government did know
9 about it, I suppose the Government could look to see
10 if there were any laws being violated. But other
11 than that, pretty much nothing.

12 Q. You were asked on direct a lot of
13 questions about the January 1969 meeting and were
14 asked to make a lot of assumptions about what was
15 discussed or not discussed or what was presented and
16 what was not presented.

17 THE COURT: You said on direct
18 examination?

19 Q (By Mr. Harrison) Excuse me, your
20 cross-examination.

21 Do you recall being asked those questions?

22 A. Yes.

23 Q. In your review of the documents in this
24 case to form your opinion -- strike that.

25 What documents did you rely on to form

1 **your opinion about the January 1969 meeting?**

2 A. The handwritten notes that I saw during my
3 cross-examination and the reference to that meeting
4 in, I believe it is the 1972 planning or feasibility
5 study, where that conference appears to be
6 referenced. And I think those are the -- well, and
7 then in February in Mr. Watson's letter to the
8 Forest Service suggesting that Molycorp would like
9 to move towards a land exchange. There is a
10 reference to the conference, but it says little
11 about it other than the idea of a land exchange was
12 suggested.

13 Q. **As an historian would you have expected**
14 **other documents from the January 1969 meeting to**
15 **have been preserved or at least part of the records**
16 **of either Chevron or the Forest Service?**

17 MR. TODD: Objection, calls for
18 speculation.

19 THE COURT: Sustained.

20 Q **(By Mr. Harrison) So you just mentioned the**
21 **February 20, 1969 letter.**

22 MR. HARRISON: If we could bring that up,
23 please, CX212.

24 Q. **(By Mr. Harrison) Is this the letter**
25 **where Chevron requests the land exchange?**

1 A. Yes. It is not the formal application,
2 that came later in the year, but this is the letter
3 in which Molycorp says that it is going to apply for
4 a land exchange.

5 Q. In your review of the documents in this
6 case, did you come across any correspondence or
7 other documents to suggest that Chevron was not
8 intent on pursuing the land exchange after this
9 point?

10 A. No.

11 Q. And so I just want to be clear when I ask
12 you a few questions about this and the subsequent
13 letters, but are there two issues going on at this
14 time with respect to the Forest Service and
15 Molycorp?

16 A. Well, I guess there is, there remains the
17 question because Mr. Watson brings it up here of
18 whether Molycorp could get the land by following the
19 mill site route, and so that is a question.

20 And then will the land exchange work, so
21 those are the two issues that are still being
22 explored here by Molycorp, which of those routes
23 would be preferable.

24 Q. But these communications don't pertain to
25 the Red River plan that you have heard about?

1 MR. TODD: Objection, leading.

2 THE COURT: Sustained.

3 Q (By Mr. Harrison) Do these plans refer to
4 the Red River plan, or excuse me, does this letter
5 refer to the Red River plan or anything related to
6 property that is on the south side of the river and
7 highway?

8 A. No.

9 Q. And, in fact, you were asked in your
10 cross-examination about the top of Page 2 of this
11 document, the first two paragraphs, or maybe the
12 first three.

13 MR. HARRISON: If we could turn to Page 2.

14 Q. (By Mr. Harrison) The first sentence
15 references Parcels 1 and 2. What is your
16 understanding as to where those parcels are located
17 on the site?

18 A. They are all on the north side of the
19 river. Parcel 1 is basically a little bit southeast
20 of the open pit mine and then there is a strip of
21 mill site claims overlaying what is called the Moly
22 tunnel, and that is the axis into the underground
23 workings from basically along the river. And
24 Molycorp had acquired that land through mill site
25 claims.

1 And then the rest of it is, the major
2 portion of the acreage is, I will say southwest,
3 west and a little bit northwest of the open pit
4 mine.

5 Q. And if you will look at the last paragraph
6 on the call-out it says, "As you know, from our
7 conference Molycorp originally contemplated located
8 mill sites in most of this area."

9 What is your understanding as to what
10 "this area" means?

11 A. The area being proposed, Parcels 1 and 2
12 for the land exchange.

13 Q. Not the area south of the river?

14 A. Correct.

15 Q. Around this time did Molycorp also propose
16 an idea about fan-shaped mill sites?

17 A. Yes.

18 MR. HARRISON: If I could show CX216 at 3.

19 Q. (By Mr. Harrison) You were asked on your
20 cross-examination about the extent to which these
21 mill site proposed mill sites went south.

22 Do you recall being asked those questions?

23 A. Went south of the river?

24 Q. Correct.

25 A. Yes.

1 **Q. And in reviewing this document where do**
2 **the proposed mill sites end?**

3 A. Well, again, it is my contention that this
4 is more of a sketch map than a precise survey map,
5 and so the edges are just south of the highway.

6 **Q. Are you aware of Chevron ever staked these**
7 **fan-shaped claims?**

8 A. I have seen no documentation that these
9 were ever staked or located. I think this was a
10 sketch to illustrate to the Forest Service an idea
11 and explore the possibilities of pursuing this idea.

12 **Q. And you heard the testimony earlier this**
13 **week about the fan-shaped plan, it was an end around**
14 **of the mill site requirements?**

15 A. I can't remember if that exact wording was
16 used, but anyhow, it was a way to be able to stake
17 and patent a lot of mill sites instead of having to
18 do them in sequence as waste rock made its way down
19 the hills onto additional mill site claims.

20 **Q. So it made it easier for Chevron, it would**
21 **have made it easier to Chevron to be able to patent**
22 **those mill site claims?**

23 A. Had Chevron pursued this route, yes.

24 MR. HARRISON: If we could go to CX216.

25 **Q. (By Mr. Harrison) You were also asked**

1 about this question on your cross-examination, but I
2 want to ask about a different issue in here, the
3 third paragraph starts with, "With regard to"?

4 A. Yes.

5 Q. What is your understanding of this
6 paragraph and the statements about the need to
7 relinquish or adjudicate the unpatented mining
8 claims?

9 A. It is my understanding that the Forest
10 Service could not have engaged in the land exchange
11 if there were already claims to the land to be
12 exchanged.

13 And to be very precise, that meant even
14 claims owned by the party that would receive these
15 lands in a land exchange. So the Forest Service
16 would want to make sure that those claims, those
17 mining claims were relinquished before the exchange
18 could be completed.

19 Q. And the Forest Service also mentions there
20 was an alternative to the relinquishment of those
21 claims and that would be a validity contest?

22 A. Yes.

23 Q. And, again, this goes to the tracts
24 adjacent to the open pit mine?

25 A. Yes.

1 Q. That ultimately ended up being the subject
2 of the land exchange?

3 A. Yes, plus some additional lands.

4 Q. In your review of the documents, were
5 there, in fact, conflicting or pending claims on
6 some of the land exchange land?

7 A. Yes.

8 Q. And in your review of the documents, do
9 you recall seeing a suggestion from Chevron that the
10 Forest Service initiate a validity contest to
11 resolve those claims?

12 A. Yes. They were claims owned by a couple
13 of other parties and Chevron suggested initially
14 that perhaps the Forest Service could initiate a
15 validity claim, a validity contest against those
16 claimholders. And if it demonstrated that they were
17 not mineralized and therefore invalid claims, then
18 they could be included in the land exchange.

19 As I recall, Molycorp decided, for
20 expediency, they would just drop that issue for the
21 time being and that is why when you look at a map of
22 what Parcel 2 looks like, there is kind of a
23 rectangular area to the southwest that was omitted.

24 Once Molycorp resolved those conflicting
25 claims, it then applied for a land exchange and

1 received patent to those claims as well.

2 Q. So also in this letter --

3 MR. HARRISON: If we could go to the top
4 of Page 2.

5 Q. (By Mr. Harrison) -- discusses not only
6 the land exchange process that we just talked about
7 with the relinquishment or the validity contest, but
8 it also discusses the shape of the mill site claims
9 that we were just discussing.

10 Do you see that?

11 A. Yes.

12 Q. And what does the Forest Service say about
13 the shape of the claims as it pertains to the
14 possible patenting of them?

15 A. "We doubt that the Mining Law contemplated
16 individual site claims of 2,000 to 3,000 feet in
17 length and we would prefer 5-acre mill sites that
18 were rectangles to conform with legal subdivisions
19 on surveyed land."

20 Q. And it also notes concern about the
21 fan-shaped nature of the mill sites?

22 A. Yes, the shape of the mill site claims as
23 proposed.

24 Q. In your experience -- strike that.

25 In your review of the documents in this

1 case, did you see any other proposed mill sites or
2 mining claims, or actual mill sites or mining claims
3 where Chevron put forward something other than a
4 rectangular shape or something similar to that?

5 A. The one -- they are 90-degree angles.
6 There was a set of mill site claims along the river
7 and the Forest Service already had a use for, I
8 believe it was a campground, and so there was
9 already a use for kind of the southeast end of some
10 of those claims. And I forget now who suggested the
11 solution, but if you will look at the property
12 boundary of those claims combined, it is kind of a
13 sawtooth pattern along there, so it is all 90-degree
14 angles but they're not rectangles, probably
15 speaking.

16 Q. But nothing like the fan-shapes or the
17 long skinny mill sites that are here?

18 A. Correct.

19 Q. You were asked in your cross-examination
20 if the Forest Service rejected Molycorp's mill site
21 applications for the area that was -- that we have
22 seen before on CX216 at Page 3, the fan-shaped mill
23 sites.

24 Do you recall being asked that question?

25 A. If the Forest Service rejected them?

1 Q. Yes.

2 MR. TODD: Objection, Your Honor.

3 A. I don't recall that precise question, no.

4 Q (By Mr. Harrison) To your knowledge, did
5 Chevron ever apply for patents on those mill sites?

6 A. No.

7 Q. Did Chevron continue dumping on the area
8 adjacent to the open pit while the land exchange was
9 pending?

10 A. Yes.

11 MR. HARRISON: With the Court's
12 indulgence.

13 THE COURT: Thank you. You may step down.
14 (Whereupon, the witness was excused.)

15 THE COURT: You may call your next
16 witness.

17 MR. HOSHIJIMA: The United States calls
18 Dr. Jay Brigham.

19 THE COURT: Brigham?

20 MR. HOSHIJIMA: Brigham, yes.

21 (Whereupon, the witness was sworn.)

22 THE COURT REPORTER: Please state and
23 spell your full name for the record.

24 THE WITNESS: My name is Jay Brigham. My
25 last name is spelled, B-R-I-G-H-A-M.

1 THE COURT: You may proceed.

2 MR. HOSHIJIMA: Dr. Brigham, did you
3 submit written direct testimony for this case?

4 THE WITNESS: Yes, I did.

5 MR. HOSHIJIMA: Have you identified a
6 small correction to a citation in that written
7 direct?

8 THE WITNESS: Yes, I have.

9 MR. HOSHIJIMA: In Paragraph 36 should the
10 citation to USX082.001 actually be a citation to
11 another page in the same document, which is
12 USX082.0012?

13 THE WITNESS: That is correct.

14 MR. HOSHIJIMA: Does that correction
15 change the substance of your testimony?

16 THE WITNESS: No, it does not.

17 MR. HOSHIJIMA: With that correction is
18 your written testimony true and correct to the best
19 of your knowledge?

20 THE WITNESS: Yes.

21 MR. HOSHIJIMA: The United States offers
22 Dr. Brigham's direct testimony.

23 THE COURT: Thank you.

24 (Dr. Jay Brigham's direct testimony was
25 prefiled and admitted.)

1 CROSS-EXAMINATION

2 BY MR. HOPSON:

3 Q. Good afternoon, Dr. Brigham.

4 A. Good afternoon, Counsel.

5 Q. I don't think we have ever met, I am Mark
6 Hopson. I am one of the lawyers representing
7 Chevron in this case.

8 A. Nice to meet you, sir.

9 Q. I have seen you in the courtroom. I think
10 we have exchanged nods a couple of times?

11 A. I believe you are correct.

12 Q. Dr. Brigham, you offer up an opinion and I
13 am actually reading from your direct testimony at
14 Paragraph 46, that the U.S. historical policies with
15 respect to molybdenum had virtually no direct impact
16 on Molycorp's mining operations at Questa, right?

17 A. That's correct. I take your word that you
18 read it correctly.

19 Q. Okay. Just two qualifiers there. Your
20 report really did focus on direct impacts not
21 indirect impacts, correct?

22 A. My report was looking at what I would say
23 is high-level Government policies really beginning
24 right before the Second World War into the
25 mid-1970s.

1 Q. And in reaching that opinion I think we
2 can agree you did not consider every Federal agency
3 policy or Federal agency action that might have had
4 an impact on the Questa Mine, correct?

5 A. Yes, sir.

6 Q. What you did look at is programs like the
7 Defense Plant Corporation, that was one of them,
8 right?

9 A. Yes, sir.

10 Q. You looked at the Emergency Plant
11 Facilities Contract program, right?

12 A. Yes.

13 Q. And without going through all of them, you
14 also looked at a Certificate of Necessity program
15 that provided for accelerated tax depreciation,
16 correct?

17 A. That's correct.

18 Q. And you agree that Molycorp would not
19 necessarily have had to apply for or receive one of
20 these specific benefits to be encouraged to increase
21 production?

22 A. I believe that's correct.

23 Q. Now, your focus, as you said, was on these
24 World War II era and Korean War era programs, right?

25 A. Those were two of my focuses.

1 Q. Right. You didn't consider, for example,
2 whether the Mining Law of 1872 had any impact on how
3 Molycorp developed the Questa Mine?

4 A. I did not examine the 1872 Mining Law.

5 Q. Okay. And you didn't consider to what
6 extent the Forest Service's Northern New Mexico
7 policy caused the Forest Service to encourage or
8 take actions to facilitate the mining at Questa,
9 right?

10 A. I did not look at that.

11 Q. You didn't focus on whether special use
12 permits were granted to Molycorp by the Forest
13 Service to enable or facilitate the development of
14 the mine?

15 A. I did not.

16 Q. You didn't consider the extent to which
17 the land exchange, which we have talked a lot about,
18 facilitated or encouraged the development of the
19 Questa Mine?

20 A. I did not.

21 Q. You didn't look at the extent to which the
22 land exchange actually affected the current location
23 of mine waste at the Questa site?

24 A. No, I did not.

25 Q. And you also didn't consider any actions

1 of the Bureau of Land Management and how that might
2 have impacted the Questa Mine?

3 A. No, I did not.

4 Q. That includes, of course, looking at sales
5 of land by the BLM, rights of way granted to
6 Molycorp by the BLM, and easements granted to BLM.
7 That is all excluded from the basis of your opinion,
8 right?

9 A. That's correct.

10 Q. One of the things that you looked at, in
11 addition to what we have already talked about, is
12 the operation of the U.S. Government's stockpile of
13 molybdenum and you looked both at the so-called
14 Metals Reserve Company and the later national
15 stockpile, correct?

16 A. Yes, sir.

17 Q. And you do agree that molybdenum was
18 considered a strategic and critical mineral that was
19 on the United States' stockpile list until 1970?

20 A. Yes.

21 Q. And molybdenum actually physically
22 remained in the U.S. Government's stockpile until
23 1975?

24 A. The sales to remove or to get rid of the
25 molybdenum, if you will, from the stockpile had been

1 made but the deliveries had not yet been, the
2 deliveries had not yet been done.

3 Q. Just like any other stockpile, they just
4 gradually sold it off, right?

5 A. Yes, gradually.

6 Q. You do know that only two companies
7 produced molybdenum primarily, and those were Climax
8 and the Questa Mine, correct?

9 A. Yes.

10 Q. And we can agree, I think, that you don't
11 have to sell to or buy from the stockpile to
12 recognize that if the Government is making a market
13 it can affect the price, right?

14 (Brief pause in proceedings.)

15 Q. (By Mr. Hopson) We both understand that
16 the Government's purchases could increase demand and
17 have an affect on price, right?

18 A. It could, yes, sir.

19 Q. And releasing materials, selling materials
20 from the stockpile could cause prices to go down?

21 A. That is certainly the case, although, as I
22 testified to in my deposition referencing the
23 Government's 30(b)(6) witness, the Government was
24 very cognizant of that and took steps to avoid it.
25 And I also think that comes through in the

1 documentation.

2 Q. Right. They didn't want to dump a lot of
3 materials from any stockpile on the market at once
4 and drive down the price, right?

5 A. Yes. They are very cognizant of not
6 wanting to negatively impact any one industry.

7 Q. Now, we have to go back a little ways, but
8 you do write that the United States did purchase
9 some molybdenum from Molycorp during World War II,
10 right?

11 A. Yes, sir.

12 Q. And you used a document that lists war
13 supply contracts, but only those contracts above
14 \$50,000?

15 A. That's correct. That is the caveat with
16 that document.

17 Q. Right. But you found that Molycorp had
18 ten contracts totaling \$2,371,000 to sell molybdenum
19 to the stockpile, correct?

20 I could pull the document up. This is not
21 a memory test, if you want me to pull the document
22 up.

23 A. I know the document quite well and your
24 characterization of it is correct, however, I
25 believe those sales were actually to the Treasury

1 Department which I would believe meant that they
2 were going into the land lease program.

3 Q. Fair enough.

4 And from all we can tell, that molybdenum
5 did come from the Questa Mine, right?

6 A. I am not 100 percent sure of that. It
7 certainly could have. It is my understanding that
8 Molycorp also had the roasting facilities that was
9 actually from the roasting facilities according to
10 that document. And perhaps the molybdenum came from
11 either Questa or from another party that Molycorp
12 purchased it from.

13 Q. Are you referencing Urad, the roasting
14 facility there?

15 A. I know Urad was, had some production
16 during the war, they had some labor issues as well.
17 I am not sure if they could have also been
18 purchasing from a third party.

19 Q. Fair enough.

20 You're familiar with the DMEA program,
21 isn't that correct?

22 A. That is correct.

23 Q. In fact, you have researched the DMEA
24 program for other expert testimony or expert reports
25 that you provided over time, right?

1 A. Yes, I have.

2 Q. And you know the DMEA was established to
3 encourage production of strategic minerals?

4 A. Yes.

5 Q. And one of those minerals was molybdenum,
6 right?

7 A. Yes, it was one of a number.

8 Q. And while you didn't focus on it, you did
9 note in your testimony that the U.S. entered into a
10 DMEA loan with Molycorp in May 1957, right?

11 A. Yes, sir.

12 Q. And you know, because of your other
13 background, that the U.S. Geological Survey or the
14 Bureau of Mines would often go on-site and provide
15 some technical advice or assistance in the context
16 of negotiating these DMEA contracts, right?

17 MR. HOSHIJIMA: Objection. It goes beyond
18 the scope of the direct exam in which we did not
19 have Dr. Brigham look at the DMEA program in the
20 context of this site.

21 MR. HOPSON: It is impeachment,
22 Your Honor. His broad opinion is narrowed by not
23 looking at the DMEA program.

24 THE COURT: Overruled.

25 Q (By Mr. Hopson) So what I was asking you is

1 you know that Federal employees with expertise in
2 mining might go on-site, boots on the ground, to
3 offer advice and assistance to companies who are in
4 the process of seeking DMEA funding, correct?

5 A. Yes, USGS and/or BOM employees.

6 Q. And there could be some back and forth
7 between the applicant and the DMEA as these
8 contracts were negotiated, right, sir?

9 A. That's correct.

10 Q. You do know and have testified that at the
11 time of the DMEA contract, the underground mine had
12 pretty much played out and they were looking to stay
13 in business in Questa, right?

14 A. Yes.

15 Q. And you also know that Molycorp was hoping
16 that a DMEA contract and exploration would allow
17 that to happen?

18 A. Well, I am certainly aware they made the
19 application and the application was approved. I
20 think it was a good business decision to seek out
21 the funding.

22 Q. Do you have any reason to believe it is
23 not accurate to say that the DMEA assistance enabled
24 Molycorp to explore new ore sources?

25 A. Well, by definition under the DMEA program

1 it had to be for exploration of new sources as
2 opposed to existing operations.

3 Q. Right. So the fact is the DMEA program
4 did enable Molycorp to explore for new ore sources,
5 right?

6 A. Yes.

7 MR. HOPSON: I have no further questions,
8 Your Honor.

9 THE COURT: Thank you.

10 You may redirect.

11 REDIRECT EXAMINATION

12 BY MR. HOSHIJIMA:

13 Q. Dr. Brigham, you were asked at the
14 beginning of that cross-examination about various
15 World War II era programs that the Government had to
16 incentivize the production of certain materials,
17 correct?

18 A. Yes.

19 Q. You were asked about the Defense Plant
20 Corporation program?

21 A. Yes, I was.

22 Q. And a facilities contract program whose
23 name you will be able to tell me?

24 A. The Emergency Facilities contract.

25 Q. You were also asked just now about the tax

1 **depreciation program, correct?**

2 A. Yes.

3 **Q. Were any of those programs specific to**
4 **molybdenum?**

5 A. No. In fact, they were economy-wide and
6 quite broad in what especially Defense Plant
7 Corporation, what could be funded.

8 **Q. And you were asked and testified about how**
9 **those were World War II and Korean War era programs,**
10 **correct?**

11 A. Well, to be accurate there was a World
12 War II set of policies and then they were reenacted
13 in September of 1950 with the Production Act.

14 **Q. You were asked whether there was World**
15 **War II and Korean War period policies would have had**
16 **an indirect impact on Molycorp's operations at the**
17 **Questa Mine, right?**

18 MR. HOPSON: That misstates the prior
19 testimony, Your Honor, objection.

20 THE COURT: Restate your question.

21 **Q (By Mr. Hoshijima) These World War II and**
22 **Korean War policies, did they have a direct impact**
23 **on the Questa Mine?**

24 A. I don't think a direct impact, no.

25 **Q. Why not?**

1 A. Well, Molycorp did not -- chose not to
2 participate in these programs, so that would to me
3 mean they didn't have a direct impact.

4 **Q. Mr. Hopson asked you whether they could**
5 **nonetheless encourage or have encouraged Molycorp's**
6 **production of molybdenum, correct?**

7 A. If they had chosen to participate I think
8 that could have happened.

9 **Q. Supposing such encouragement could have**
10 **happened, what was happening in the timeline of the**
11 **Questa site at the time of these programs?**

12 A. Are we talking -- are you asking for both
13 World War II period and the Korean period?

14 **Q. Let's go one at a time.**

15 A. Well, that during World War II they,
16 obviously, the underground, the first underground
17 mine was still being operated and that actually was
18 the case during Korea, though I believe there were
19 some signs that the mineralized ore had started to
20 tail out.

21 **Q. All of these programs that Mr. Hopson**
22 **asked you about were before the open pit mine,**
23 **correct?**

24 A. Yes, sir.

25 **Q. How would you characterize generally the**

1 **United States' policy about defense-related**
2 **materials during World War II and the Korean War?**

3 A. Well, especially during World War II,
4 which was much larger in scale and scope in many
5 ways than Korea, but it also is applicable to the
6 Korean War period. The concern was how to manage
7 scarcity. There was an overwhelming demand for
8 metals, minerals, fuels, almost an endless list of
9 commodities and items, and the Government needed
10 to -- the Government had to institute programs to
11 encourage further development, further use and also
12 to make sure that those engaged in production for
13 either of the wars were receiving the materials over
14 those who were engaged in production that was not
15 essential to the war, or the wars in this case.

16 **Q. Was there any change in that national**
17 **defense policy by the time Molycorp had started the**
18 **open pit mine at Questa?**

19 A. Well, I believe, you know, you originally
20 asked me about wartime policies, which I described.
21 I do believe there was a change in the
22 United States' defense posture in the mid-1950s
23 after the Korean War.

24 **Q. How would you describe that change?**

25 A. The change was a result of the election of

1 President Eisenhower, who pledged in the war in
2 Korea, which he did. President Eisenhower also had
3 a very great concern about balancing the budget and
4 reducing defense spending.

5 To that end he came up with what was
6 deemed the New Look defense policy, which was much
7 more relying on the Air Force and the nuclear
8 deterrent, at that time, bombs but within a few
9 years missiles, as well as covert operations.

10 And again it was largely motivated by a
11 concern with spending and Federal spending. I think
12 that impacts a lot of what we actually talked about
13 with the move away, you know, the decline in the
14 stockpile, the expense associated with it, excuse
15 me, and those types of things.

16 **Q. To be clear are we talking about --**

17 MR. HOPSON: Your Honor, I am going to
18 object. This is very interesting but far beyond the
19 scope of my cross.

20 THE COURT: That's correct.

21 **Q (By Mr. Hoshijima) How would you describe**
22 **the impact that a change in policy in the 1950s had**
23 **on the United States' defense interest in**
24 **molybdenum?**

25 MR. HOPSON: Beyond the scope, Your Honor.

1 THE COURT: Sustained.

2 Q (By Mr. Hoshijima) You were asked on your
3 cross-examination about various other laws like the
4 Mining Law or the Northern New Mexico policy.

5 Do you recall that?

6 A. Yes.

7 Q. And other Forest Service and land
8 management agencies policies, like special use
9 permits?

10 A. I recall those questions.

11 Q. Do you have expertise generally with the
12 United States' historic defense policy during this
13 time period? And by that, I mean the '50s and the
14 '60s?

15 A. Yes.

16 Q. Were those programs considered important
17 parts of a national defense policy?

18 A. Those aren't programs that I would
19 normally think of when I would be thinking of a
20 national defense policy.

21 Q. You were also asked about the national
22 defense stockpile and molybdenum's inclusion in that
23 stockpile, correct?

24 A. Yes.

25 Q. You were asked about how there was

1 molybdenum in that stockpile until the 1970s.

2 Do you recall that?

3 A. I recall those questions.

4 Q. When does the amount of molybdenum in the
5 stockpile peak?

6 A. It was in 1956.

7 Q. Are you aware of the United States
8 purchasing any molybdenum for the stockpile at any
9 point after that time?

10 A. No, I am not.

11 Q. In fact was there a time after that when
12 the Government was diverting deliveries to the
13 stockpile?

14 A. Well, it was in 1956 when they diverted,
15 first made a diversion from the stockpile. And I
16 believe I might have misspoke a moment ago, it is
17 '56, '57 were the high points.

18 Q. So why is it, then, that there is
19 molybdenum in the stockpile until the 1970s if the
20 Government's really not acquiring any more after the
21 mid-1950s?

22 A. Well, there is a couple of reasons. By
23 the late '50s Congress was starting to look at this
24 and there was concern about it, as I have mentioned.
25 The expense of maintaining the stockpile, not just

1 molybdenum, but the entire stockpile, there is quite
2 a few things in it. It took Congress several years
3 until 1962 to pass the first law to authorize sales
4 out of it.

5 And there were subsequent laws, obviously,
6 but as I testified, there was a concern that you
7 don't want to flood the market of molybdenum or any
8 other market.

9 Q. You were asked at last about purchases
10 that the Government made of molybdenum from Molycorp
11 during World War II.

12 Do you recall that testimony?

13 A. Yes.

14 Q. You were asked if you could say whether
15 any of the molybdenum came from the Questa site.

16 Do you recall that?

17 A. Yes.

18 Q. What are the other possible sources that
19 Molycorp could have had for the molybdenum that it
20 sold to the United States in World War II?

21 A. Well, as I believe I have testified, the
22 Urad mine in Colorado did have some production and
23 then it is possible that the roasting facilities at
24 Molycorp in Washington, New York, Pennsylvania,
25 perhaps purchased it on the market.

1 Q. Are you aware of any evidence that would
2 suggest one way or the other if it is more likely
3 that the molybdenum that Molycorp sold under those
4 contracts came from Questa or from one of those
5 other sources?

6 A. I have seen nothing to indicate from where
7 that material came from.

8 Q. Because we don't have that historical
9 documentation anymore?

10 A. That is correct. Those contracts have
11 long since been destroyed.

12 Q. Do you know if Molycorp ever sold
13 molybdenum to the United States at any point after
14 World War II?

15 A. Not with certainty.

16 Q. Are you aware of any evidence that the
17 Government purchased molybdenum from Molycorp after
18 World War II?

19 A. Again, we don't have that, we don't have
20 that documentation. I can't testify one way or the
21 other.

22 Q. If Molycorp was not selling molybdenum to
23 the United States, who would it have been selling to
24 after World War II?

25 A. Other private enterprise, steel companies,

1 other companies that would use molybdenum for one
2 thing or another.

3 Q. Were private steel companies, then, the
4 major consumers of molybdenum?

5 A. I know from the documentation that the
6 majority of molybdenum went into steel, steel
7 products into steel, yes.

8 Q. Do you know if most of those steel
9 products would have eventually been bought up or
10 used by the United States Government?

11 A. Well, I am sure some of those steel
12 products were used for by the Government for defense
13 or other purposes. I would also suspect some went
14 to, into the private market.

15 Q. Well, what were some of the possible uses
16 of that molybdenum containing steel in the private
17 market?

18 A. Well, people use steel for many things.
19 You could use it for bridge building, you could use
20 it for any number of things. You could use it in
21 the, you know, the '50s and the '60s were the age of
22 the big cars, they still had a lot of steel in them.
23 They wouldn't surprise me.

24 Q. And when you say cars, are you talking
25 about passenger cars that private citizens would

1 **use?**

2 A. Yes, Detroit, for lack of a better phrase.

3 **Q. You were asked by Mr. Hopson about the**
4 **DMEA program.**

5 Do you recall that?

6 A. Yes.

7 **Q. Now, to be clear, you weren't asked to**
8 **review Molycorp's documentation or the documentation**
9 **relating to Molycorp's DMEA contract, correct?**

10 A. Yes, I was, I was told that Dr. Quivik
11 would review that. I was asked not to.

12 **Q. Nonetheless do you have general knowledge**
13 **of the DMEA program?**

14 A. Yes, I do.

15 **Q. And that is what Mr. Hopson asked you**
16 **about, correct?**

17 A. Yes, it is.

18 **Q. Where does that knowledge come from?**

19 A. I testified in my deposition, that was in
20 December of 2019, that I had worked on the Federal
21 resources case up in Northern Idaho.

22 Since my deposition I was asked to work on
23 the Gold King case involving the Domingo Mining
24 District in Colorado, and I looked at a number of --
25 well, actually they were DMEA and also OME

1 contracts.

2 Q. Based on that other experience which
3 Mr. Hopson asked you about, do you have knowledge
4 about the end of the DMEA program?

5 A. Yes, I do.

6 Q. When and how did the DMEA program come to
7 an end?

8 A. It officially came to an end in the spring
9 of 1958.

10 At that time it was decided that the
11 defense element of it was no longer needed. So the
12 DMEA went out of business, so to speak, and the OME
13 replaced it.

14 The OME was -- and the documentation, it
15 is in the record, was that although you don't need
16 this encouragement for national defense, it is good
17 public policy, anyway, for sound economic growth.

18 One of the differences between the DMEA
19 and the OME is that under OME there was an interest
20 component added, so it is not quite as favorable as
21 it was under the DMEA.

22 Q. You said it was in 1958 that the DMEA
23 program came to an end?

24 A. That is when it officially came to an end.

25 Q. That was less than a year after the DMEA

1 **contract in this case was signed?**

2 A. Yes. In fact, I believe it was in May of
3 '58, so it was almost maybe exactly a year.

4 Q. So the DMEA contract that was signed here
5 shortly before the end of the DMEA program, did the
6 United States honor it?

7 A. Yes.

8 MR. HOSHIJIMA: Let's quickly pull up
9 CX089, which has been previously admitted.

10 Q. **(By Mr. Hoshijima) This is a 1958**
11 **Government report.**

12 **Are you familiar with this document?**

13 A. Yes, I have seen this.

14 MR. HOSHIJIMA: Can you turn to PDF
15 Page 20 of the report. Under the heading Enactment
16 of a New Program, can we magnify that first
17 paragraph.

18 Q. **(By Mr. Hoshijima) Do you see where it**
19 **says that in 1957 ODM advised that there was no**
20 **longer a defense necessity for the DMEA program?**

21 A. Yes, I see that.

22 Q. **Is that consistent with your understanding**
23 **of the history of that program?**

24 A. Yes, it is.

25 Q. **And ODM, do you recall what that was?**

1 A. I believe it is Office of Defense
2 Management.

3 Q. The sentence after that it says that all
4 minerals and metals expansion goals had been filled
5 and stockpiles of most such commodities were now
6 sufficient.

7 Is the history of the United States'
8 stockpile of molybdenum consistent with that
9 statement?

10 A. Yes, it is.

11 MR. HOSHIJIMA: I have no further
12 questions.

13 THE COURT: Thank you.

14 You may step down, sir.

15 THE WITNESS: Thank you, Your Honor.

16 (Whereupon, the witness was excused.)

17 THE COURT: You may call your next
18 witness.

19 MR. AUGUSTINI: No more witnesses,
20 Your Honor.

21 THE COURT: Thank you. We are out of
22 witnesses. Do we have any idea when the next
23 witness will be available?

24 MS. CRISHAM PELLEGRINI: Your Honor, we
25 just spoke with Dr. Haddad and his mother

1 unfortunately took another turn for the worse and is
2 in the hospital, so he is still unclear as to when
3 he will be available, but he is hoping to find that
4 out shortly. He will let us know and then we can
5 confer with the Government.

6 THE COURT: Very good we will go into
7 recess and wait on how his mom does and we will try
8 to set up a date, as I say, probably the week after
9 next at the earliest, depending on what happens to
10 me in Denver.

11 So thank you-all for your presentations,
12 they were very helpful, and we'll be in recess
13 subject to call.

14 (Proceedings concluded at 2:57 p.m.)

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: March 16, 2022

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